

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

|                                   |                            |
|-----------------------------------|----------------------------|
| RAFAEL RODRIGUEZ,                 | . Civil Action No. 16-1033 |
|                                   | .                          |
| Plaintiff,                        | .                          |
|                                   | . 601 Market Street        |
| vs.                               | . Philadelphia, PA         |
|                                   | .                          |
| PRIMECARE MEDICAL, INC. SUSAN,    | .                          |
| RORBERTS, LPN, ALLISON YOUNG, RN, | . March 23, 2017           |
| PAULA DILLMAN-MCGOWAN, CRNP,      | . 9:02 a.m.                |
| and ELIZABETH GARCIA, LPN,        | .                          |
|                                   | .                          |
| Defendants.                       | .                          |

. . . . .  
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TRANSCRIPT OF TESTIMONY OF PAULA DILLMAN-MCGOWAN  
BEFORE HONORABLE EDWARD G. SMITH  
UNITED STATES DISTRICT JUDGE

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**I N D E X****Page****WITNESS FOR THE PLAINTIFF**

PAULA DILLMAN-MCGOWAN

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1 MS. RAMEAU: Yes, Your Honor. Plaintiff calls Paula  
2 Dillman-McGowan.

3 (Witness summoned)

4 THE COURT: Good morning, ma'am.

5 THE WITNESS: Good morning.

6 THE CLERK: Remain standing and raise your right hand.

7 Do you swear or affirm that the testimony you're about  
8 to provide in the issue now before this Court shall be the  
9 truth, the whole truth, and nothing but the truth so help you  
10 God?

11 THE WITNESS: I do.

12 THE COURT: Thank you very much, ma'am. Ma'am, you  
13 may be seated. And, ma'am, would you please state your full  
14 name, spelling your last name for the record.

15 THE WITNESS: Paula Dillman-McGowan, D-I-L-L-M-A-N  
16 hyphen M-C-G-O-W-A-N.

17 THE COURT: Thank you very much, ma'am.

18 Counsel, you may proceed.

19 PAULA DILLMAN-MCGOWAN,  
20 a witness, having been first duly sworn, was examined and  
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. RAMEAU:

24 Q Good morning, Ms. McGowan.

1 A Good morning.

2 Q Now, Ms. McGowan, on Monday you were here when Dr. Brown  
3 testified, correct?

4 A Yes.

5 Q And you understand Dr. Brown to be the Chief of Surgery at  
6 Reading Hospital, is that right?

7 A Yes.

8 Q The treating physician in this case, correct?

9 A The treating general surgeon, yes.

10 Q The treating physician once the Plaintiff got to Reading  
11 Hospital, correct?

12 A Correct.

13 Q The surgeon, right?

14 A Yes.

15 Q And you heard Dr. Brown detail his extensive training and  
16 surgical experience, correct?

17 A Yes.

18 Q You also heard him testify that what you did in this case  
19 relative to our client, Rafael Rodriguez, fell below the  
20 standard of care. You heard that, right?

21 A Yes.

22 Q But you disagree with Dr. Brown, correct?

23 A Yes.

24 Q You don't think you did anything wrong, correct?

25 A Yes.

1 Q And you heard Dr. Brown detail the state of Rafael  
2 Rodriguez' stomach at the time of the surgery on April 20, 2015,  
3 correct?

4 A Yes.

5 Q The extent of Rafael Rodriguez' disease process. You heard  
6 that testimony, correct?

7 A Yes.

8 Q But you didn't think that -- you still don't think that you  
9 did anything wrong, correct?

10 A Yes.

11 Q Did you learn anything at all, Ms. McGowan, from Dr.  
12 Brown's testimony?

13 A Yes.

14 Q Is there anything that if you could go back that you would  
15 do differently?

16 A Absolutely not.

17 Q So you've learned nothing, correct?

18 MR. NINOSKY: Objection. Argumentative and asked and  
19 answered.

20 MS. RAMEAU: Withdrawn.

21 BY MS. RAMEAU:

22 Q You wouldn't change a thing, correct?

23 A Absolutely not.

24 Q Now I want to begin, Ms. McGowan, with a discussion about  
25 your background and level of experience in medicine. You are

1 what's called a certified registered nurse practitioner, right?

2 A That is correct.

3 Q You hold an advanced degree in nursing, correct?

4 A Yes.

5 Q You hold a license that allows you to practice medicine,  
6 correct?

7 A I hold a license that allows me to practice advanced  
8 nursing care.

9 Q Like a doctor somewhat, correct?

10 A Similar to the fashion in which a physician practices.

11 Q Well, if you so choose actually you could go out into the  
12 public, into the population at large and collaborate with  
13 physicians and open up a practice, correct?

14 A Yes.

15 Q A clinic where you can diagnose and treat disease, correct?

16 A Yes.

17 Q Much like a physician, right?

18 A Yes.

19 Q A clinic where you can prescribe medication, right?

20 A Yes.

21 Q Much like a physician, right?

22 A Yes.

23 Q Have your own patients, right?

24 A Yes.

25 Q Like a doctor, right?

1 A Yes.

2 Q And you have had this license to practice in your field for  
3 a number of years, is that right?

4 A Yes.

5 Q You have over a decade of experience, in fact, in your  
6 field, correct?

7 A Yes.

8 Q Years of clinical experience under your belt, right?

9 A Yes.

10 Q And that is in part why you are the one in charge of  
11 supervising the RNs and the LPNs at the Berks County Jail,  
12 correct?

13 A That's incorrect. I do not supervise the RNs and LPNs at  
14 the jail. I provide patient care to patients that are  
15 incarcerated at the facility.

16 Q So you have no responsibility over the RNs and the LPNs at  
17 the Berks County Jail, is that right?

18 A My responsibility and supervision, as you would call it,  
19 over the nursing staff is to assure that they execute or carry  
20 out the orders that I give them.

21 Q So when you tell them to do something, right, when you tell  
22 them to do something or give them an order your job is to see to  
23 it that it is done properly, right?

24 A Yes.

25 Q So in a sense you are in charge, right, to that extent,

1 correct?

2 A I believe I am in charge of providing patient care.

3 Q And being in charge of providing patient care is, you'll  
4 agree with me, a tremendous responsibility, correct?

5 A Absolutely, yes.

6 Q Primarily because the health and the safety of the prison  
7 population is in your hands, correct?

8 A It's partially in my hands, correct.

9 Q But also because, as you said, you know, part of your job  
10 is to see to it that the nurses who practice with you properly  
11 execute your orders, correct?

12 A Yes.

13 Q And sometimes the nurses, they call you, right?

14 A Absolutely.

15 Q They call you when you're on the premises, right?

16 A They approach me when I'm on the premises.

17 Q And when you're off the premises they call you if they need  
18 you, correct?

19 A Yes.

20 Q They call you sometimes with questions, is that right?

21 A Yes.

22 Q They call you for clarity in case they need to resolve any  
23 confusion, correct?

24 A Yes.

25 Q But, of course, you have some level of trust, right, in the



1 RNs and the LPNs that you work with, is that right?

2 A Absolutely.

3 Q You trust the RNs and the LPNs who work with you. You  
4 trust Allison Young, for example, who we saw testify via video,  
5 correct?

6 A Absolutely.

7 Q You trust the Defendant, Susan Roberts, who is sitting next  
8 to you throughout the course of this trial as well, correct?

9 A Yes.

10 Q You trust that they're both capable of conducting a proper  
11 abdominal assessment, right?

12 A Yes.

13 Q Now I want to talk to you briefly about this thing called a  
14 sick call process. You are familiar with that term.

15 A Yes.

16 Q And what that is is that involves a triage process,  
17 correct, a process of prioritizing which medical complaints to  
18 address first and which medical complaints can wait, is that  
19 right?

20 A Yes.

21 Q That's what triage is, right?

22 A Yes.

23 Q Figuring out who needs medical care ASAP and who can wait,  
24 right?

25 A Correct.

1 Q Now you don't participate in the triage process, correct?

2 A No.

3 Q You leave that to the RNs and the LPNs you work with, I  
4 should say, to figure out who to see first and who can wait, is  
5 that right?

6 A Yes.

7 Q And you also don't attend this process called sick call  
8 where, you know, the medical complaints made previously are  
9 addressed, correct?

10 A No.

11 Q You leave that to the RNs and the LPNs you work with to  
12 resolve these issues, correct?

13 A Yes.

14 Q Now sick call is something that is normally conducted in  
15 the housing units themselves, right?

16 A To my knowledge, yes. The majority sick call is conducted  
17 on the housing unit. Occasionally a patient may be brought to  
18 the medical unit to have their sick call complete.

19 Q Understood. Now the housing unit would have been where  
20 Rafael Rodriguez was housed prior to April 17th, correct?

21 A Yes.

22 Q And you don't go down there very often, right?

23 A The only time I enter a housing unit is if there is a  
24 medical emergency and an advanced level provider is required to  
25 be on the housing unit. For instance, if someone were to

1 require CPR, if someone were to have a seizure, if a nurse was  
2 uncomfortable with a situation at a housing unit and I was  
3 within the facility, that that nurse would then contact the  
4 medical department either by phone or have an officer radio to  
5 the department that an advanced level provider is required on  
6 the housing unit.

7 Q Okay, understood. I just want to clarify. So you don't go  
8 down to the housing unit unless there happens to be what you  
9 consider an emergency ongoing in the housing unit, correct?

10 A Well, not what I consider to be an emergency. It's what  
11 the patient considers to be an emergency.

12 Q Understood.

13 A It's what the correctional officer considers to be an  
14 emergency or what the licensed nurse considers to be an  
15 emergency or even if the medical assistant is on the housing  
16 unit and she is uncomfortable with something.

17 Q Understood.

18 A So I really don't consider -- I'm not aware of what's  
19 occurring on the housing unit for it to be determined to be a  
20 medical emergency or not.

21 Q I understand, but let's say, for example, a patient needs  
22 CPR, right?

23 A Yes.

24 Q You might consider that to be an emergency, is that right?

25 A Yes.

1 Q Let's say, for example, a patient happens to be bleeding  
2 profusely as a result of an assault, right, bleeding that is  
3 uncontrolled, right? You would consider that to be a medical  
4 emergency, right?

5 A Yes.

6 Q Now, but a patient experiencing abdominal pain is not  
7 necessarily compelling enough to get you down there to the  
8 medical floor, is that right? Withdrawn. It's withdrawn. Now,  
9 so if I understand what you said correctly, you leave it to the  
10 RNs and the LPNs you work with generally to determine and to  
11 convey to you, you know, what emergencies there might be taking  
12 place in the medical unit, is that right? And the correctional  
13 officers too, right?

14 A Not within the medical unit.

15 Q Well, I meant -- I'm sorry. I stand corrected. I meant  
16 within the housing unit.

17 A Right. Within the general housing unit.

18 Q And, I mean, that's understandable, right, because you  
19 can't get yourself involved in every single medical complaint of  
20 the Berks County Jail, correct?

21 A Correct.

22 Q But you do get more actively involved when a patient asks  
23 to see a provider, is that right?

24 A If a patient asks to see a provider, I will be involved.

25 If a custody staff member requests that a patient see a

1 provider, if a nursing staff member requests that the patient be  
2 seen by a provider. Occasionally our physicians will request  
3 when they are not within the building that we follow up with a  
4 patient they're following, that we see them.

5 Q Uh-huh.

6 A We have a health service administrator and a director of  
7 nursing. Those people can request that we see a patient. So  
8 there's a multitude of ways that patients can be seen by a  
9 provider.

10 Q I understand. Now, and the reason you would get involved  
11 once a patient asks to see a provider is because when a patient  
12 requests to see a provider that might be an indication that the  
13 patient is getting worse, right?

14 A When a patient requests to see a provider, it can be an  
15 indication that I requested that they request to see me.

16 Q Okay. Let me just stop you and clarify my question. I  
17 would like, if you don't mind, to limit your questions -- your  
18 response to my question.

19 MR. NINOSKY: Your Honor, and that's why I'm standing.  
20 The witness is attempting to answer the questions and she's  
21 continually trying to be cut off, so I would respectfully ask  
22 that she be permitted to answer the question because obviously  
23 they've been responsive to the questions that have been asked so  
24 far.

25 MS. RAMEAU: I'm not trying to cut her off, Your

1 Honor. I'm just trying to save us some time because I know  
2 she'll have an opportunity to explain her testimony when Mr.  
3 Ninosky stands before this jury to do his cross-examination.

4 THE COURT: Understood. Why don't --

5 MS. RAMEAU: So I'm just trying to save the Court some  
6 time.

7 THE COURT: Why don't you reask the question --

8 MS. RAMEAU: Okay.

9 THE COURT: -- and allow her to answer the question.

10 MS. RAMEAU: I'll do that, Your Honor.

11 MR. NINOSKY: Thank you, Your Honor.

12 BY MS. RAMEAU:

13 Q So if a patient, Ms. McGowan, asks to see a medical  
14 provider, it could be because the patient is getting worse,  
15 right?

16 A Yes.

17 Q Now I understand that there could be other reasons, right,  
18 but it could very well be because the patient was getting worse,  
19 is that fair to say?

20 A Yes.

21 Q Now because this maybe an indication that the patient's  
22 condition is getting worse, when that happens you get yourself  
23 more actively involved, right?

24 A Yes.

25 Q And when a patient asks to see a provider it may also be an

1 indication that whatever the RNs and the LPNs you work with had  
2 been doing to help the patient is not working, is that right?

3 It may be an indication of that as well, is that right?

4 A It may be an indication of that. It also may be an  
5 indication that the patient feels more comfortable seeing a  
6 provider. It can be an indication --

7 Q I understand there can be a multitude of possibilities, but  
8 I'm asking you about this one possibility for now. Okay. Later  
9 you can, you know, respond to that in Mr. Ninosky's questions  
10 about it. All right. Just for now, try and answer my  
11 questions. Is that all right?

12 A Yes.

13 MR. NINOSKY: Your Honor, again, she is cutting the  
14 witness off.

15 THE WITNESS: Yes. I'm sorry.

16 MS. RAMEAU: It's okay. It's okay. It's all right.  
17 No worries.

18 MR. NINOSKY: Your Honor, again, she's cutting the --

19 MS. RAMEAU: Now --

20 MR. NINOSKY: Your Honor, respectfully, again, she's  
21 cutting the witness off in the middle of an answer. Whether I  
22 ask questions or not really isn't relevant to the fact that this  
23 witness is trying to give a responsive response to the questions  
24 asked.

25 MS. RAMEAU: Your Honor, can we approach? This is

1 inappropriate for the jury.

2 THE COURT: Certainly. Counsel, please approach.

3 (Sidebar)

4 MS. RAMEAU: He's trying to cut off the flow of my  
5 cross, Your Honor. That's what he's doing, you know.

6 MR. NINOSKY: I'm waiting for a flow.

7 MS. RAMEAU: It's cross-examination. I'm asking a  
8 question and the question is framed a certain way and she can  
9 answer it yes or no. Okay. But instead she's going into, you  
10 know, other possibilities and such and he can do that when he  
11 gets up to do his cross-examination, but for no I just want the  
12 witness to answer my questions. I don't want to waste Your  
13 Honor's time. I don't want to waste the jurors' time.

14 MR. NINOSKY: Every response thus far, I suggest to  
15 the Court, has been responsive to the question, has not been  
16 going off some beaten path. The question's been asked. A  
17 responsive response has been given that have been cut off by  
18 Counsel which is not fair to that witness who is being accused  
19 of malpractice to explain her answers.

20 MS. RAMEAU: She can explain it when you cross her,  
21 right? So --

22 THE COURT: Most of the questions call for yes or no  
23 answers (inaudible). Sometimes they need to be explained. I  
24 think if she can (inaudible). I think it's going just fine.  
25 It's fast and sometimes that's tough (inaudible) cutting her



1 off. (Inaudible).

2 MS. RAMEAU: It's cross-examination, Your Honor.  
3 That's the way it's supposed to be conducted.

4 THE COURT: Unless they don't like it. Unless they  
5 don't like it. I think it's (inaudible), but it is important  
6 that (inaudible). When she's questioning, she may not question  
7 as fast as you. She may not (inaudible), but so far I have seen  
8 nothing wrong.

9 MS. RAMEAU: Thank you, Your Honor. Thank you.

10 THE COURT: Just continue with your questioning.  
11 Thank you.

12 (End of Sidebar)

13 BY MS. RAMEAU:

14 Q Ms. McGowan, I don't want to give you a hard time, okay. I  
15 just want you to let me know if you don't understand a question  
16 and I'll repeat it, okay?

17 A Okay.

18 Q All right. Now, we talked about patients asking to see a  
19 provider. Do you remember those questions?

20 A Yes.

21 Q And how that might be an indication that the patient was  
22 getting worse. You remember that?

23 A Yes.

24 Q Now, you'll agree, Ms. McGowan, that having a patient ask  
25 to go to the hospital is akin to having a patient ask to see a

1 provider, right?

2 A Yes.

3 Q Because that might also be an indication that the patient  
4 is getting worse, correct?

5 A Yes.

6 Q That might also be an indication that whatever the RNs and  
7 the LPNs had been doing to try and help the patient is not  
8 working, correct?

9 A Yes.

10 Q So it's fair to say that you also get more actively  
11 involved when the patient asks to go to the hospital, correct?

12 A Yes.

13 Q Now, on April 17th at about 7:00 p.m. you had already left  
14 the Bergs County Jail, correct?

15 A Correct.

16 Q You had gone home, right?

17 A Correct.

18 Q You had finished your shift, correct?

19 A Yes.

20 Q But at about 7:00 p.m. you got a call while you were at  
21 home and you learned that Rafael Rodriguez had asked to go to  
22 the hospital, correct?

23 A No, that's incorrect.

24 Q Well, do you not recall getting a call while you were at  
25 home on April 17, 2015 --

1 A Oh, I'm sorry, on April --

2 Q -- from Susan Roberts, your codefendant.

3 A I'm sorry. On April 17th, yes.

4 Q April 17th.

5 A Yeah. I just, I was --

6 Q From Susan Roberts, your codefendant --

7 A I received --

8 Q -- telling you -- let me just finish. Telling you that  
9 Rafael Rodriguez had made it very clear that he wanted to go to  
10 a hospital. Do you remember that now?

11 A No, I was not aware that he wanted to go to the hospital.

12 Q Okay. Well, let me just show you this document to see if  
13 it refreshes your recollection in that regard. Just a moment,  
14 Your Honor.

15 THE COURT: Certainly, Counselor.

16 MS. RAMEAU: Oh, yes, Your Honor. I'm showing  
17 Plaintiff -- the record reflect that I'm showing Plaintiff's  
18 Exhibit 2 PCM73. Let the record reflect that I'm showing the  
19 witness PCM73.

20 THE COURT: It will be just a moment for the  
21 technology to begin.

22 MS. RAMEAU: Okay.

23 BY MS. RAMEAU:

24 Q Now, Ms. McGowan, now please take a look at the document.  
25 Can you see it?

1 A Yes.

2 Q I don't think the jurors can see it, Your Honor.

3 THE CLERK: It's coming up.

4 MS. RAMEAU: Okay.

5 THE CLERK: It just takes a minute. There you go.

6 BY MS. RAMEAU:

7 Q Now, you had an opportunity while you prepared to testify  
8 today to review Rafael Rodriguez' charge, correct?

9 A Yes.

10 Q And you also went over the chart, correct?

11 A Yes.

12 Q Now I want to turn your attention to the document that's on  
13 the screen in front of you. Now you recognize that to be a  
14 chart note, correct?

15 A Correct.

16 Q And this note was written by one of the RNs that you --  
17 LPNs, rather, that you work with, correct?

18 A Yes.

19 Q They are your codefendant, Susan Roberts, correct?

20 A Yes.

21 Q And, well, it appears that the note was entered into the  
22 computer at 7:11 p.m., correct?

23 A Correct.

24 Q Now that note seems to indicate that at 7:00 p.m., and I'm  
25 going to show you the rest of the note, that Rafael Rodriguez

1 indicated that he wanted to go to the hospital. Do you see  
2 that?

3 A That's what is written in the note.

4 Q Understood. So your testimony is that you had no idea about  
5 that, right?

6 A That's absolutely correct.

7 Q Nobody told you he wanted to go to a hospital, right?

8 A No.

9 Q Nobody told you that he was upset and demanded to be sent  
10 to a hospital, right?

11 A Correct.

12 Q All right. Let's move on. I'm actually done with the  
13 projector, Your Honor, for now. Now, the week of April 13, 2015  
14 through the 17th, you were among the providers at the facility,  
15 correct?

16 A Correct.

17 Q And you were there on the 14th, right?

18 A The only day I'm not in the facility is typically on  
19 Wednesday because I'm in another facility that day, so I'm not  
20 sure what day of the week that was.

21 Q Okay. That's understood. I understand, Ms. McGowan. So  
22 the 17th would have been a Friday, right?

23 A Correct.

24 Q You were there on the 17th, correct?

25 A Correct.

1 Q And the 16th happened to be a Thursday, right?

2 A Correct. Yes.

3 Q So you wouldn't have been there, is that what you're  
4 saying, or is it --

5 A No, I was there.

6 Q -- you were there on Thursday?

7 A I wouldn't have been there on the 15th.

8 Q Understood.

9 A I would not have been in the facility on the 15th.

10 Q Understood. So the 16th would have been a Thursday, right?

11 A Yes.

12 Q And you were there that Thursday, correct?

13 A Correct.

14 Q Now the 15th was a Wednesday, correct?

15 A Correct.

16 Q But you weren't there, correct, because you don't work at  
17 the Berks County Jail on Wednesdays, right?

18 A Correct. Yes.

19 Q And you were there on the 14th, right?

20 A Yes.

21 Q Which was a Tuesday.

22 A Yes.

23 Q All right. Now you work from 8:00 to 4:00 Monday through  
24 Friday, is that right?

25 A Typically, yes, depending on patient need.

1 Q Understood. And sometimes after 4:00 you're on call,  
2 right?

3 A There's always a provider that's on call when we are not in  
4 the facility.

5 Q And the week of the 14th you were the one on call, correct?

6 A Yes.

7 Q Now you didn't see Rafael Rodriguez on the 14th, right?

8 A No.

9 Q You didn't see Rafael Rodriguez on the 16th, correct?

10 A Correct.

11 Q And you didn't see Rafael Rodriguez on the 17th, correct?

12 A Correct.

13 Q But that's okay with you because the RNs and the LPNs who  
14 work with you saw Rafael Rodriguez, correct?

15 A Yes.

16 Q Now let's talk about what happened specifically on Friday,  
17 April 17, 2015. Now, I want to start in the very early morning  
18 hours while you were home, okay?

19 A Okay.

20 Q I'm talking right after midnight on the 17th. Now  
21 obviously you weren't at the facility at the time, correct?

22 A Correct.

23 Q You were at home in bed, right?

24 A Yes.

25 Q And at that time you got a call from the Berks County Jail,

1 right?

2 A Yes.

3 Q And it was Allison Young, wasn't it?

4 A Yes.

5 Q One of the nurses that you work with, right?

6 A Yes.

7 Q The one we saw testify via video, correct?

8 A Yes.

9 Q And Allison Young told you that Rafael Rodriguez was  
10 complaining of abdominal pain, isn't that right?

11 A Allison Young reviewed his vital signs, told me that he was  
12 vomiting, and that he had some abdominal discomfort, yes.

13 Q So what she told you was that he was still vomiting,  
14 correct?

15 A I believe that she told me that's what the patient stated  
16 and that she had witnessed him vomit in the medical department.

17 Q So if she told you that that's what the patient stated you  
18 had no reason to doubt --

19 A Correct, yes.

20 Q -- the fact that Rafael Rodriguez had been vomiting before  
21 when he said that he was still vomiting, correct?

22 A Correct.

23 Q And you ordered Allison Young early in the morning while  
24 you were home to bring Rafael Rodriguez to the medical office,  
25 correct?



1 A To the medical department, yes.

2 Q I'm sorry, to the medical department for an assessment, is  
3 that right?

4 A Correct.

5 Q And for her to palpate his abdomen, right? So assess it,  
6 correct?

7 A Correct.

8 Q So Allison Young, pursuant to your order, had Rafael  
9 Rodriguez brought to the medical department, correct?

10 A Correct.

11 Q And when Rafael Rodriguez got to the medical department he  
12 vomited on the floor of the medical department, correct?

13 A Okay. I wasn't sure where he vomited, but yes, he vomited  
14 --

15 Q But you knew that he vomited in the medical department,  
16 correct?

17 A -- in the medical department, correct.

18 Q In plain view of Allison Young, is that right?

19 A I don't know if Allison was with him when he vomited.

20 Q Well, she told you that she took a look at the vomit,  
21 right?

22 A Correct.

23 Q That she observed the vomit on the floor of the medical  
24 department, correct?

25 A Well, sometimes patients vomit in their toilets and they'll

1 come or in the bathroom in the medical unit and we'll go into  
2 the bathroom to observe it. Sometimes they'll vomit in a  
3 nemesis vase. And I don't --

4 Q I understand that.

5 A I don't where she --

6 Q But my question was Allison Young, when she spoke with you  
7 subsequent to that, made it clear to you that she had an  
8 opportunity to observe the vomit herself, correct?

9 A Correct. Yes.

10 Q And she was able to describe it in fact, correct?

11 A Yes.

12 Q And your response to Allison Young when she told you that  
13 Rafael Rodriguez vomited in the medical department was to order  
14 her to have Rafael Rodriguez sit in the medical department and  
15 have him try and drink and eat something, is that right?

16 A Yes.

17 Q Now, there's no indication anywhere in the PrimeCare  
18 medical records that Rafael Rodriguez ever had anything to drink  
19 or to eat at the time you ordered him to have something to drink  
20 and to eat, correct?

21 A I believe Allison reported that he tolerated water and some  
22 pretzels.

23 Q But I'm talking about early in the morning now.

24 A Yes.

25 Q While you were home in bed.

1 A That's when I wanted him to be closely observed, monitored.

2 Q Okay. Well, let me show you a document to see if that  
3 refreshes your recollection about the fact that it is not  
4 documented in the medical records that Rafael Rodriguez was in  
5 fact able to tolerate water or food at the time you ordered that  
6 he be provided water and food. Your Honor, can we have a  
7 moment, please?

8 THE COURT: Certainly, Counselor.

9 BY MS. RAMEAU:

10 Q Okay. So, Ms. McGowan, with permission from the Court, I'd  
11 like to show you portions of the medical records within the time  
12 range that we're talking about. And I want you to have a look  
13 at it, okay. Just take a look to see if you see anywhere, okay,  
14 where it's reflected that this order that you gave while you  
15 were at home that Rafael Rodriguez be given water and food,  
16 where exactly the records reflect that Rafael Rodriguez did in  
17 fact have water and food.

18 MR. NINOSKY: And, Your Honor, at this point I don't  
19 know what documents were presented to the witness, but I would  
20 ask that if Counsel is going to give witnesses and asking for  
21 that type of a representation that page 184 be provided to the  
22 witness as well.

23 THE COURT: My concern is it appears that you just  
24 handed one very large group of documents to the witness. And I  
25 don't know whether it's going to be necessary that she review

1 that entire --

2 MS. RAMEAU: I understand, Your Honor.

3 BY MS. RAMEAU:

4 Q I'll take it back, Ms. McGowan. Let me just --

5 A Can I answer the question, please?

6 THE COURT: Sure, if you want to.

7 MS. RAMEAU: Or actually, I'm going to withdraw the  
8 question for now. Let me just find the record and we'll get  
9 back to it.

10 Okay. That question is withdrawn.

11 THE COURT: Very well.

12 BY MS. RAMEAU:

13 Q Okay, now. So hours after that telephone call with Allison  
14 Young, after the conversation about Rafael Rodriguez vomiting in  
15 the medical department, you got behind the wheel of your car,  
16 right, and you drove to work, is that right?

17 A Yes.

18 Q On the 17th.

19 A Yes.

20 Q You went back to the Berks County Jail, is that correct?

21 A Yes.

22 Q Like you did, you know, pretty much every day, right?

23 A Correct, yes.

24 Q And you got there about 8:00, is that right?

25 A Yes.

1 Q So now you're back at work again. I just want to make it  
2 clear that we're talking about the same day, right? You got the  
3 call early morning hours and then some hours later you went back  
4 to work on the 17th on the same day, correct?

5 A Correct.

6 Q Now at 8:00 once you got to work only hours after speaking  
7 with Allison Young about the vomit, you didn't go down to the  
8 medical unit to assess Rafael Rodriguez, is that right?

9 A Rafael --

10 Q It's a yes or no question, ma'am. You didn't, did you?

11 A It's really not a yes or no question.

12 Q Well, did you go down to the medical unit to see Rafael  
13 Rodriguez when you got to work at 8:00 --

14 A Mr. --

15 Q -- on April 17th?

16 A Mr. Rodriguez was not in the medical unit. He was in the  
17 general housing unit.

18 Q Okay. Well, I meant the housing unit. I'm sorry.

19 A And I don't --

20 Q I'll rephrase the question. Now when you got to work,  
21 right, the early morning hours of April 17th after talking to  
22 Allison Young the night before about Rafael Rodriguez indicating  
23 that he was still vomiting, right, about Rafael Rodriguez  
24 vomiting in the medical department, okay, hours after that you  
25 go to work, right? Right? You get to work at 8:00 on the 17th,

1 correct? So but when you get there you didn't go down to the  
2 housing unit to have a look at Rafael Rodriguez for yourself,  
3 correct?

4 A We don't go to the housing units.

5 Q Okay. I'm not asking you about what you do. I'm asking  
6 you specifically what you did.

7 MR. NINOSKY: Your Honor, may we approach, please?

8 THE COURT: Certainly. Counsel, please approach.

9 MS. RAMEAU: I'll withdraw the question, Your Honor.  
10 Withdrawn.

11 MR. NINOSKY: I would still like to approach.

12 THE COURT: I think it has more to do with something -  
13 - Counsel.

14 (Sidebar)

15 MR. NINOSKY: I respectfully request that Counsel be  
16 advised do not get in the face of the witness. We have a  
17 podium. There's no reason for her to get directly in the  
18 witness' face. It's been going on throughout this examination.  
19 I don't know if she's trying to physically intimidate this  
20 witness or not, but I would ask that there be space got.

21 MS. RAMEAU: I tell you, for you to try and talk about  
22 somebody trying to intimidate someone, it's comical because  
23 that's what you do every single day in this courtroom.

24 THE COURT: I appreciate ii.

25 MS. RAMEAU: Comedy.

1 THE COURT: And (inaudible). But you do have to let  
2 her answer.

3 MS. RAMEAU: Yes, Your Honor.

4 THE COURT: She has answers to them and we're not  
5 getting the answers. We're just getting the question and  
6 (inaudible).

7 MS. RAMEAU: Okay.

8 THE COURT: Be a little more careful.

9 MS. RAMEAU: Okay.

10 THE COURT: All right.

11 MS. RAMEAU: Thank you.

12 MR. NINOSKY: Thank you, Your Honor.

13 (End of Sidebar)

14 THE COURT: Counsel, you may proceed.

15 BY MS. RAMEAU:

16 Q Yes. So, I'm sorry. So your testimony is that you don't  
17 go down to the housing unit, right?

18 A I do not see patients on the housing unit, right.

19 Q Now, you didn't call to have Rafael Rodriguez brought up to  
20 the medical unit for you to have a look at him when you got to  
21 work at 8:00 on the 17th, is that right?

22 A No.

23 Q And you didn't call to have him brought to you on the  
24 medical unit at 10:00 in the morning -- at 9:00 in the morning,  
25 correct?

1 A Correct.

2 Q You didn't call to have him brought to you for you to  
3 assess him at 10:00 in the morning, correct?

4 A Mr. Rodriguez was not assessed by me on Friday, the 17th.

5 Q He wasn't assessed by you at all, all day, correct?

6 A On Friday, yes, correct.

7 Q And at 4:00 in the afternoon you got behind the wheel of  
8 your car and you left the facility, correct?

9 A Correct.

10 Q But, Ms. McGowan, I just want to understand something here,  
11 you were on the premises, right? Right?

12 A Correct.

13 Q But you didn't see him, right?

14 A That is correct.

15 Q You were on the premises, but you didn't assess him, right?

16 A I was on the premises of a 1,200 bed facility.

17 Q You were on the premises and you didn't assess him, is that  
18 right?

19 A That's correct.

20 Q Now, so let's go back now to the morning of April 17th.

21 Now, you did receive information, did you not, that Rafael  
22 Rodriguez had not eaten breakfast the morning of April 17th, is  
23 that right?

24 A I didn't receive that information.

25 Q So you had no idea how he was doing that morning, correct?



1 A No, the nurse on the unit would have received that  
2 information.

3 Q Well, I'm not asking you about the nurse on the unit. I'm  
4 asking you about you in particular. So your testimony is that  
5 the morning of April 17th you had no idea how Rafael Rodriguez  
6 was doing, is that right? Is that fair to say?

7 A That's correct, yes.

8 Q And you didn't call down the unit, to the nurse you were  
9 just referring to, to try and inquire as to how Rafael Rodriguez  
10 was doing, is that right?

11 A Our mornings are typically very busy at the facility. We  
12 have a lot of detox patients that we need to treat. We have  
13 patients from the previous day that need to be seen. We depend  
14 on our nursing staff to come to us with their concerns after  
15 they've triaged a patient.

16 Q That's very interesting. My question was you didn't call  
17 any of the nurses that are in the housing unit to inquire as to  
18 how Rafael Rodriguez was doing the morning of April 17, 2015,  
19 correct?

20 A I don't call the nurses on the housing units at all to  
21 inquire about any patients.

22 Q And you don't call even when in the middle of the night you  
23 get a call from a nurse saying that someone is complaining that  
24 they're still vomiting and when they're brought up to the  
25 medical floor they vomit again. In spite of that, right, you

1 just don't inquire, right? Is that fair to say?

2 A When patients are medically stable we depend on the nurses  
3 to triage patients beyond when we are not available or when we  
4 are in the building. So if a patient is ill in the middle of  
5 the night and they stabilize, we're just going to wait for the  
6 next day for the patient to complain and for the nurse to triage  
7 that patient and bring it to our attention.

8 Q I understand. So you allow the nurses, the LPNs and the  
9 RNs, right, to determine what it is that you do, is that fair to  
10 say?

11 A That's absolutely incorrect.

12 Q Okay. So you wait to get information relative to a patient  
13 from the nurses, the LPNs and the RNs to determine what it is  
14 that you should do, is that fair to say?

15 A Correct. If the patient is complaining.

16 Q Understood.

17 A If there are concerns that the patient has or the nurse  
18 has, she will approach the provider.

19 Q So let's say that you were to learn that the morning of  
20 April 17, 2015, that Rafael Rodriguez had no appetite, right,  
21 would that have been a fact that would have been of some  
22 significance to you?

23 A Absolutely not. He had been awake most of the night. He  
24 was resting in the medical department at some point under  
25 observation of the nursing staff. He tolerated some solids and

1 liquids. He may have returned to the general housing unit and  
2 slept through breakfast and that's why he did not eat breakfast.

3 Q Understood. So any indication that Rafael Rodriguez was  
4 suffering from what's called anorexia, right, which is lack of  
5 appetite, the morning of the 17th is really of no consequence to  
6 you, correct?

7 A That's absolutely incorrect. One missed meal does not  
8 quantify anorexia.

9 Q I see. Now, you also had information that Rafael Rodriguez  
10 had later eaten that day a small lunch, is that right? Do you  
11 remember getting that information?

12 A I don't recall receiving that information.

13 Q You never got that information?

14 A I don't recall receiving it, no.

15 Q So you had no idea whether he had been eating in the  
16 afternoon on April 17th, is that right?

17 A That's correct.

18 Q Okay. I'll move on. But isn't it your position that there  
19 was an improvement in his condition when he ate the pretzels and  
20 had the water?

21 A Absolutely.

22 Q That is your position, right?

23 A Uh-huh.

24 Q That he was doing better.

25 A He had no further vomiting.

1 Q He had no -- he stopped vomiting, right?

2 A He rested comfortably.

3 Q He rested comfortably and he had water, is that right? And  
4 he had pretzels?

5 A He tolerated solids and liquids and was resting comfortably  
6 with no further report of vomiting to me that morning.

7 Q Understood. So at 4:00 when you left the facility you  
8 figured Rafael Rodriguez was perfectly fine, that he was all  
9 right, correct?

10 A I believe Rafael Rodriguez was stable when I left the  
11 facility.

12 Q Now --

13 A I would have no other reason to not believe that. I had no  
14 further nursing encounters that day.

15 Q Understood. But once you got home later that evening on  
16 April 17, 2015, after you thought he was getting better, right,  
17 because he had the pretzels, because he had the water, and  
18 because he was resting comfortably, Rafael Rodriguez was still  
19 complaining of abdominal pain, isn't that right?

20 A He must have complained again of some symptom that the  
21 nurse felt was something she needed to bring to my attention.

22 Q Right. And she did bring it to your attention, right?

23 A Correct.

24 Q And the nurse that you're talking about who brought these  
25 symptoms -- and we're talking about the same abdominal symptoms,

1 is that right?

2 A I believe it's a different location of the pain.

3 Q But it's still within the abdomen, right?

4 A Correct.

5 Q So and the nurse who brought that to your attention happens  
6 to be your Codefendant, Susan Roberts, right? The young woman  
7 who's seated at the table.

8 A Correct.

9 Q Blond hair. Now Susan Roberts had a discussion with you  
10 about an encounter that she had with Rafael Rodriguez, is that  
11 right?

12 A She --

13 Q On the 17th in the evening.

14 A Well, she brought to my attention that he was having  
15 abdominal pain and pain that had radiated into his groin.

16 Q Now she also told you that she proposed to Rafael Rodriguez  
17 -- withdrawn. She also told you that she asked Rafael Rodriguez  
18 what kind of medication he wanted for the pain, isn't that  
19 right? To which Rafael Rodriguez responded, "None. They don't  
20 work anyway." Do you remember that?

21 A Mr. Rodriguez was not being administered medication for  
22 pain. He was being administered medication to treat his  
23 abdominal upset, his GI upset.

24 Q Now I'm not asking you why he was being provided  
25 medication. I'm asking you, and I'm only asking you, about an

1 encounter between Ms. Roberts and Rafael Rodriguez on the 17th.  
2 Just a moment. Your Honor.

3 THE COURT: Yes, Counselor.

4 MS. RAMEAU: Can I use the overhead projector?

5 THE COURT: Certainly.

6 MS. RAMEAU: Thank you.

7 BY MS. RAMEAU:

8 Q All right, Ms. McGowan. Just a moment. Okay. Now we're  
9 looking at the same note we discussed earlier, okay. Now this  
10 note relates to a call about Rafael Rodriguez, correct?

11 Withdrawn. Now take a look at the top of the note. Again, this  
12 note was authored by Susan Roberts, correct?

13 A Yes.

14 Q And this note indicates here that patient was asked which  
15 meds he wanted and he replied, "None. They don't work anyways."  
16 Do you see that?

17 A Yes.

18 Q And it's put in quotes, right?

19 A That's correct.

20 Q And that's an indication that that's exactly what Rafael  
21 Rodriguez said, correct?

22 A Correct.

23 Q Now, the note seems to reflect that Mr. Rodriguez was  
24 agitated. You see that?

25 A Yes.

1 Q Now, in your experience as a medical provider, I mean  
2 you've seen people in pain, right?

3 A Yes.

4 Q And that time people were in pain can appear to be  
5 agitated, is that right?

6 A Yes.

7 Q Now let's look further down. I see an additional quote.  
8 It says here, "You guys don't even know what you're doing. No  
9 one is trying to help me." Do you see that?

10 A Yes.

11 Q Now the note also says here that patient reminded that he  
12 was assessed last evening by myself and third shift. Patient is  
13 now stating that the pain is going lower. Do you see that?

14 A Yes.

15 Q Now the fact that this note indicates that the pain is  
16 going lower, is that of any significance to you?

17 A I was not aware of that note.

18 Q So no one told you that the pain was going lower, right?

19 A I was told that the pain is in the lower quadrants and into  
20 the testicle.

21 Q I see. So Susan Roberts didn't communicate to you the fact  
22 that Plaintiff indicated to her that the pain was going lower,  
23 correct?

24 A Well, he communicated to her that he had epigastric pain,  
25 right upper quadrant, left upper quadrant pain on the 16th, and

1 then this evening he is communicating to her that the pain was  
2 in the lower quadrants of the abdomen and into the groin. So he  
3 communicated --

4 Q I see.

5 A -- his pain to her. She communicated the pain to me.

6 Q So at that point you were made aware of the fact that  
7 Rafael Rodriguez was affected by abdominal pain in both the  
8 right lower and the left lower quadrant, correct?

9 A And into the testicle.

10 Q And into the testicles as well, correct?

11 A Yes.

12 Q And these facts were of no significance to you, rather,  
13 correct?

14 A That's absolutely incorrect.

15 Q I see. So they were significant, right?

16 A Yes. And it did --

17 Q They were significant -- let me just ask the next question.  
18 They were significant. However, you didn't get behind the wheel  
19 of your car to drive back to the Berks County Jail to conduct an  
20 assessment of Rafael Rodriguez for yourself, a provider's  
21 assessment, correct?

22 A That is correct.

23 Q Now let's take a look at this note further. Now this note  
24 states that Plaintiff said that he wanted to go to the hospital.  
25 It also said that Plaintiff walked away from the med cart and



1 continued to put down the medical department. Now, is it fair  
2 to say that that is a characterization by Susan Roberts of what  
3 Rafael Rodriguez actually said?

4 MR. NINOSKY: Objection.

5 MS. RAMEAU: Withdrawn. It's withdrawn.

6 BY MS. RAMEAU:

7 Q Now let's read further.

8 MR. NINOSKY: Your Honor, may we approach?

9 THE COURT: Certainly. Counsel, please approach.

10 MS. RAMEAU: Your Honor, I can move on. I'll move on.

11 (Sidebar)

12 THE COURT: Okay.

13 MR. NINOSKY: We'll see where she moves on to, but so  
14 far, so good.

15 THE COURT: Okay.

16 (End of Sidebar)

17 BY MS. RAMEAU:

18 Q Now, you testified that the fact that he complained of both  
19 lower right and lower left quadrant pain and the testicular  
20 pain, that you found that to be significant.

21 A Yes.

22 Q However, it didn't trigger a change in your treatment plan,  
23 correct?

24 A That is incorrect.

25 Q Well, did you come back to see about him?

1 A I changed my treatment plan.

2 Q How did you change your treatment plan? What did you do?

3 A I moved him to the medical unit for closer observation. I  
4 ordered vital sign checks. I assured that 15 minute checks  
5 would be completed by the custody department.

6 Q Understood. Since you brought up the topic of these 15  
7 minute checks, let's talk about the 15 minute checks. Now, you  
8 ordered these 15 minute checks for Rafael Rodriguez. However,  
9 these 15 minute checks are not conducted by RNs, are they?

10 A No.

11 Q These 15 minute checks are not conducted by LPNs, is that  
12 right?

13 A Correct.

14 Q They're not conducted by doctors, correct?

15 A Correct.

16 Q They're not conducted by physician's assistants, correct?

17 A The 15 minute checks are conducted by --

18 Q They are not conducted by physician's assistants, correct?

19 A That is correct. Yes.

20 Q These 15 minute checks are not conducted by medical  
21 professionals at all, right?

22 A Yes.

23 Q The 15 minute checks that you ordered are conducted by  
24 correctional officers, right?

25 A That is correct.

1 Q And when you ordered the 15 minute checks you had  
2 absolutely no idea what the 15 minute checks entailed, isn't  
3 that right?

4 A That is correct.

5 Q You didn't know what you were orderings, isn't that right?

6 A That's incorrect.

7 Q Now you testified previously in this case, correct?

8 A Yes. I knew --

9 Q At a deposition, correct?

10 A Correct. Yes.

11 Q Now before you gave your testimony at the deposition you  
12 took an oath, is that right?

13 A That is correct.

14 Q You raised your hand and you took an oath, right?

15 A Yes.

16 Q This was an oath to tell the truth, right?

17 A Yes.

18 Q And you knew it was important to tell the truth when you  
19 were deposed in this case, correct?

20 A Yes.

21 Q Now, Your Honor, Counsel, for the record, I'm on page 93 of  
22 the witness' deposition transcript starting at line 7. Now, Ms.  
23 McGowan, at the deposition were you asked the following  
24 questions and did you give the following answers -- 7, line 7?  
25 Question. "What are the medical checks?" Your answer, Ms.

1 McGowan. "The officer walks around the unit every 15 minutes  
2 and checks on the patient." Question. "What is the officer  
3 looking for?" Answer. "I don't know what the officer looks  
4 for. I just ordered the medical checks. I don't know what is  
5 in their prescription, what is in their description to do  
6 medical checks."

7 Question. "But you're the one giving the order to do the  
8 medical checks." Your answer, Ms. McGowan, "Right, which they  
9 will look in the cell and then what they do beyond that, I don't  
10 know." Question. "But do you know when you are ordering  
11 medical checks what you're wanting the officer to look for?"  
12 And your answer, Ms. McGowan, "We do not give them specific  
13 instructions. They walk to the cell every 15 minutes and  
14 visualize the patient." Question. "Do you know what the  
15 officer is supposed to look for?" Answer. "No. It's the  
16 standard check."

17 Question. "How would the officer what the patient is? The  
18 officer needs to report something to the medical staff."

19 Answer. "Yeah. I don't know what the officer would know that -  
20 - I don't know how the officer would know that." Question.  
21 "I'm just confused because you're ordering medical checks, but  
22 your understanding, you don't know what the officer is looking  
23 for." Your answer, Ms. McGowan, "The officer, the 15 minute  
24 medical checks is standard within the facility for every single  
25 patient. It does not vary. The officer presents to the medical

1 cell door every 15 minutes and views the patient."

2 Question. "What are they viewing? Are they just viewing  
3 to see if they're alive?" Your answer. "I don't know what  
4 they're viewing because I'm not -- I just every 15 minutes the  
5 officer goes to the cell door." Question. "Does he then make  
6 some sort of notation?" Your answer, Ms. McGowan, "I don't  
7 know." Question. "Do you ever review the officer's medical  
8 checks?" Your answer, Ms. McGowan, "No." Question. "What is  
9 the purpose of ordering medical checks? Your order, Ms.  
10 McGowan?" "That the patient is checked every 15 minutes."  
11 Question. "But you don't know how checked for what." Your  
12 answer. "No, no. It's the officers checking, not the nursing  
13 staff." Question. "What is the purpose of checking the vital  
14 signs?" Which one? That's the end of the impeachment.

15 Ms. McGowan, when you were asked those questions, you'd  
16 give those answers.

17 A You just advised me or questioned me that I did not know  
18 what orders I gave and I answered that is incorrect. I know  
19 what orders I gave. I --

20 Q Well, I was asking you about medical checks, Ms. McGowan.

21 A No, you were not. You were asking me about what orders I  
22 gave and I went -- I would like to make it clear that I was very  
23 well of what orders I gave. A 15-minute medical check is  
24 conducted by the custody department. I am not involved in the  
25 training. I am not involved in the education of what the

1 custody staff members do, so I am fully aware of what order I  
2 gave.

3 Q Now were you asked those questions I just asked you and did  
4 you give those answers at the deposition?

5 A Yes.

6 Q Now, let's move on to something else. Now, assuming that  
7 you thought Rafael Rodriguez was getting better because he has  
8 eaten pretzels and such and had water earlier in the day, by the  
9 end of the day, right, you had information that he wasn't doing  
10 so well, isn't that right?

11 A I had information that he had some additional complaints  
12 and he had some additional concerns related to his pain.

13 Q But you didn't make yourself available to Rafael Rodriguez  
14 by driving back to the Berks County Jail to conduct a provider's  
15 assessment of Rafael Rodriguez, correct?

16 A The patient was stable.

17 Q My question was you didn't get behind the wheel of your car  
18 to get back to the facility to conduct a provider's assessment  
19 of Rafael Rodriguez, correct, the night of the 17th.

20 A The patient was stable. I did not feel that that was  
21 necessary.

22 Q So you didn't do it because you didn't think it was  
23 necessary, right?

24 A I did not do it because the patient was stable.

25 Q He was stable, but he was also asking to get to a hospital,

1 right?

2 A I was not aware of that.

3 Q No one told you that, right? No one told you that, right?  
4 You had no idea, correct?

5 A Correct.

6 Q Now you did order some tests for Rafael Rodriguez, is that  
7 right?

8 A Yes.

9 Q You ordered a blood test and you ordered it stat, correct?

10 A Yes.

11 Q And what stat means is now, correct? Right away, is that  
12 right?

13 A Stat in a correctional facility can -- is not consistent  
14 with you may be -- where I work is not consistent with what you  
15 may be thinking of as stat. I ordered the blood work to be done  
16 that day, so the nurse would have wrote stat for the bloodwork  
17 to be done that day.

18 Q Now you did order it stat. You said stat, right, when you  
19 ordered the blood test, is that right?

20 A Yes.

21 Q The nurse didn't come back -- come up with that on her own,  
22 correct?

23 A Correct.

24 Q You ordered the blood test stat as opposed to routine,  
25 correct?

1 A Routine bloodwork in the facility is done on a Tuesday or a  
2 Wednesday.

3 Q You ordered the blood test stat as opposed to routine,  
4 correct?

5 A Correct.

6 Q Now you ordered it stat on the 17th, but you didn't inquire  
7 as to the results of the blood test on the 18th, the next day,  
8 did you?

9 A No.

10 Q You didn't inquire as to the result of this blood test that  
11 you had ordered stat on the 19th either, did you?

12 A Any bloodwork that is critical --

13 Q You didn't order the -- you didn't inquire into the results  
14 of the blood test that you ordered stat on the 17th on the 19th,  
15 did you? That's the question. Do you not want to answer my  
16 question?

17 THE COURT: Can you answer the question?

18 THE WITNESS: Any bloodwork that is abnormal, the lab  
19 will immediately -- will call the facility and report those  
20 abnormalities to us, to the nursing staff. The nursing staff  
21 will then in turn call the provider and alert them to the fact  
22 that the lab work is abnormal. I do not routinely call in to a  
23 facility to review normal results.

24 BY MS. RAMEAU:

25 Q Now I see you turning your attention directly to the jury



1 as you speak, right?

2 A Yes.

3 Q That's an indication of your preparation to testify at the  
4 trial, correct?

5 MR. NINOSKY: Objection, Your Honor.

6 THE COURT: I will sustain that objection, although  
7 you are free to ask her what preparation she might have done in  
8 preparation for her testimony.

9 BY MS. RAMEAU:

10 Q Now I want to direct your attention to these test results,  
11 right, the lab work that you had ordered stat, all right.

12 (Attorneys confer)

13 BY MS. RAMEAU:

14 Q Now, Ms. McGowan, take a look at the top right corner of  
15 the document. Do you see this area here?

16 A Yes.

17 Q Now it says that the blood was collected on April 17, 2015,  
18 do you see that?

19 A Yes.

20 Q At 4:00 in the morning, correct?

21 A Yes.

22 Q That it was received by the lab on April 17th at 11:30 at  
23 night that same day, correct?

24 A Yes.

25 Q And that a result was issued on April 18th at 6:55 in the

1 morning. That's a Saturday, correct?

2 A Correct.

3 Q But you didn't inquire as to the results of the blood test  
4 over the weekend, did you?

5 A There's a policy --

6 Q My question was you didn't inquire as to the results of the  
7 blood test that you had ordered stat over the weekend, correct?

8 A There was not a need for me to inquire.

9 Q I see. You didn't need to look into it, correct?

10 A Normal lab work.

11 Q Understood. Now we're going to turn your attention to the  
12 area where it says clinical report. Do you see that?

13 A Yes.

14 Q And there's an area here that says clinical abnormalities,  
15 summary. Do you see that?

16 A Yes.

17 Q And it says glucose is elevated, correct?

18 A Yes.

19 Q Which is consistent with diabetes, right?

20 A That result right there --

21 Q I'll withdraw that. Now I'll turn your attention to the  
22 second line where it says (inaudible), right?

23 A Yes.

24 Q And it says 81.7. Do you see that?

25 A Yes.

1 Q And it says lanced, right?

2 A Yes.

3 Q 7.1, right?

4 A Yes.

5 Q And this lab, the lab who conducted this testing, was sure  
6 to note that this was somewhat of a clinical abnormality, is  
7 that right?

8 A Yes.

9 Q Now I want to turn your attention to April 20, 2015. It's  
10 Monday morning again, is that right?

11 A That is correct, yes.

12 Q And you went back to work, right?

13 A Yes.

14 Q At the Berks County Jail, correct?

15 A Yes.

16 Q Now once you got there at 8:00 you didn't go in to see  
17 Rafael Rodriguez right away, did you?

18 A Correct.

19 Q You didn't see him at 8:00, right?

20 A Correct.

21 Q You didn't see him at 9:00, correct?

22 A Yes.

23 Q You didn't see him at 10:00, right?

24 A Yes.

25 Q At about 10:30 there was a loud scream coming from the

1 medical unit, is that right?

2 A I don't recall a loud scream.

3 Q You don't? You didn't hear it, right?

4 A I don't recall hearing it.

5 Q But didn't one of your assistants tell you that Rafael  
6 Rodriguez had been screaming at the top of his lungs on the  
7 medical unit at about 10:30 in the morning that Monday?

8 A Yes.

9 Q And so at that time finally you saw Rafael Rodriguez for  
10 the first time, correct?

11 A Yes.

12 Q And for the first time, you were able to lay eyes on him,  
13 right?

14 A Yes.

15 Q For the first time, you were able to lay hands on him,  
16 right?

17 A Yes.

18 Q And you examined him, correct?

19 A Yes.

20 Q And you made certain notes in your chart, right?

21 A Yes.

22 Q And you noted that his abdominal pain started two to three  
23 days prior, correct?

24 A Yes.

25 Q Well, that's not exactly accurate, is it?

1 A Well, that would be what the patient subjectively stated to  
2 me.

3 Q Just a moment.

4 (Attorneys Confer)

5 BY MS. RAMEAU:

6 Q Okay. Now, Ms. McGowan, this is a note that you authored,  
7 correct?

8 A Yes.

9 Q And the note indicates that Mr. Rodriguez had been having  
10 abdominal pain for two to three days. Do you see that?

11 A Complaining of abdominal pain over the past two to three  
12 days.

13 Q So, and your testimony to this jury is that you got that  
14 directly from the client, right?

15 A Yes.

16 Q From the patient rather, correct?

17 A Yes.

18 Q Now, but you had been getting complaints as far as April  
19 16th about Rafael Rodriguez complaining of abdominal pain,  
20 correct?

21 A From nursing staff, yes.

22 Q So when you wrote down in this medical record that he had  
23 been experiencing abdominal pain for two to three days, you knew  
24 full and well that that was inaccurate, correct?

25 A No, that's not inaccurate.

1 Q It's not. Okay.

2 A The patient was complaining of two to three days of  
3 abdominal pain. That would have been --

4 Q But you knew he had been having abdominal pain as far back  
5 as, at the very least, the 16th if not the 15th or the 14th,  
6 correct?

7 A The patient complained of two to three days of abdominal  
8 pain. That would have -- not including Monday. That would have  
9 reflected Sunday, Saturday, Friday.

10 Q Now, let me focus your attention on this document, right.  
11 Now this document indicates a call, right, that you received  
12 while you were home, correct?

13 A Correct.

14 Q On the 16th, is that right?

15 A Yes.

16 Q And it indicates that Rafael Rodriguez had been complaining  
17 of abdominal pain, right, as far as April 16, 2015, is that  
18 right?

19 A The subject component of my note is everything that the  
20 patient says to me. It has nothing to do with what I am aware,  
21 what my interpretation of his presentation is. So the  
22 subjective is what the patient is telling me or what you go to  
23 your healthcare provider's office and you tell your healthcare  
24 provider. It doesn't reflect anything that I knew.

25 Q I see. I see. So the fact that it happened to be

1 documented in his chart that -- withdrawn. So let's talk about  
2 what two days before would be, right? For example, you know  
3 that the pain started two to three days before. Now, this note  
4 was made on the 20th, correct?

5 A Correct.

6 Q So two days before the 20th would mean that the pain  
7 started on the 18th on the Saturday, right? The Saturday while  
8 you were at home.

9 A That's what the patient reported to me, two to three days.

10 Q And, but you knew that wasn't true, right?

11 MR. NINOSKY: Objection. Asked and answered.

12 THE COURT: It's cross-examination. Well, it's direct  
13 examination of an adverse witness. I'll overrule the objection  
14 at this point with the understanding that we do have to move it  
15 along.

16 BY MS. RAMEAU:

17 Q You knew that he had been complaining. You'd been getting  
18 calls, in fact, of him experiencing abdominal pain and vomiting,  
19 right, as far back as the 17th, correct?

20 A That's -- okay. Yes, I was aware, but that note does not  
21 reflect my interpretation, my assessment, my plan. That is  
22 everything the patient stated to me regarding their complaints.

23 Q I see. Now you documented here that Rafael Rodriguez  
24 reported his pain to be at a level of 10 out of 10, correct?

25 A Correct. That's what the patient stated.

1 Q Well, isn't it a fact that when you asked him to rate his  
2 pain from a level of 10 out of 10, he told you that his pain was  
3 at a level of 20, isn't that right?

4 A Well, I would have wrote 20 if he told me 20.

5 Q Well, you wouldn't have written 20 because the range is 1  
6 to 10, so you wrote 10, right?

7 A I explained the pain -- any time I interact with a patient  
8 that has a pain complaint I explain to them the pain scale, 0 is  
9 no pain and 10 is the worst pain of your life, so where would  
10 you rate that? And that's the number that they give me that I  
11 put on the pain scale.

12 Q Okay. So you documented in your note that Rafael Rodriguez  
13 had the highest pain level given the scale that you had given  
14 him, correct?

15 A The scale that I give to everyone, yes.

16 Q And you learned some other information from Rafael  
17 Rodriguez that day, correct?

18 A Correct.

19 Q You learned that he had been vomiting, is that right?

20 A That he vomited, yes.

21 Q Did you ask him whether he had vomited over the weekend?

22 A I would have just generally asked about vomiting. Do you  
23 have any nausea, vomiting, diarrhea?

24 Q And did he?

25 A He had vomiting.



1 Q Over the weekend, right?

2 A Well, he had vomiting. Can I see my note, please? Can I  
3 refer to my note?

4 Q Sure.

5 A Thank you.

6 Q Here you go.

7 A So he had vomiting. He vomited ten minutes ago. He had  
8 diarrhea. His last episode of diarrhea was the day before. He  
9 was nauseated.

10 Q My question was, was he vomiting over the weekend?

11 A I was not aware that he was vomiting over the weekend.

12 Q Did you ask him whether he vomited over the weekend?

13 A I asked him about nausea and vomiting, diarrhea, belly  
14 pain.

15 Q But you knew that you left him in the medical unit on  
16 Friday, right, with 15 minute checks being conducted by  
17 correctional officers with no medical experience, right. And  
18 you come back to work on the 20th, right, and you don't ask him  
19 how he was doing over the weekend?

20 A And vital signs were checked over the weekend. He  
21 encountered nursing over the weekend at med passes.

22 Q So you didn't ask him how he was doing over the weekend, is  
23 that it?

24 A I asked him what his symptoms were, how he was feeling. He  
25 rated his pain as a 10.

1 Q So was he vomiting over the weekend. That's my question.

2 A He was vomiting. He vomited that morning.

3 Q Was he vomiting over the weekend is what I'm asking about.

4 A My note does not reflect him telling me he vomited over the  
5 weekend.

6 Q And your note does not reflect his condition over the  
7 weekend, correct?

8 A No.

9 Q You didn't think that that was important to document the  
10 state of a patient that you left in a medical cell, right, in  
11 the medical unit being subjected to 15 minute checks which you  
12 don't understand, right? Given your testimony previously, you  
13 didn't think to ask him how he was doing over the weekend?

14 MR. NINOSKY: Your Honor, may we approach?

15 THE COURT: Certainly. Counsel, please --

16 MS. RAMEAU: I'll withdraw the question, Your Honor.

17 MR. NINOSKY: I would still like to approach.

18 MS. RAMEAU: I'll withdraw the question.

19 THE COURT: Mr. Ninosky would still like to approach.

20 (Sidebar)

21 THE COURT: Mr. Ninosky.

22 MR. NINOSKY: Certainly they're entitled to get into  
23 what the physical presentation was for the patient. I also  
24 understand the pain and suffering component in the case.  
25 However, Dr. Brown said she met the standard of care with her

1 assessment on the morning of the 20th, so I don't know this line  
2 of questioning where we're going. It really isn't relevant  
3 because Dr. Brown had no criticism of this witness and said on  
4 the direct questions she specifically stated she met the  
5 standard of care with her evaluation on the Monday morning,  
6 April 20th. This --

7 MS. RAMEAU: Your Honor, do I have to respond to this?  
8 I don't think I should have to. This is cross-examination.  
9 It's proper cross. He's just trying to interrupt my flow. I  
10 just want to be able to finish my cross, Your Honor. I don't  
11 want to waste your time, okay. I'm almost done.

12 THE COURT: (Inaudible) the objection.

13 MS. RAMEAU: Thank you, Your Honor. Thank you.

14 (End of Sidebar)

15 BY MS. RAMEAU:

16 Q All right. So let's continue with our discussion about  
17 what happened on April 20th. So when you saw him you finally  
18 conducted your abdominal assessment, right, a provider's  
19 assessment, correct?

20 A Yes.

21 Q And what you did was to palpate his abdomen, correct?

22 A Yes.

23 Q In all four quadrants, right?

24 A Yes.

25 Q And you noted absolutely no rebound tenderness, correct?

1 A That's correct.

2 Q None?

3 A Yes.

4 Q Do you not understand that Rafael Rodriguez had an  
5 appendicitis, right?

6 A Can you repeat the question?

7 Q You did not understand that Rafael Rodriguez suffered an  
8 appendicitis, correct?

9 A Yes.

10 Q An appendicitis with zero rebound tenderness, correct?

11 A Yes.

12 Q Now, let's talk about the right lower quadrant pain, right.  
13 Now Rafael Rodriguez did in fact exhibit symptoms of right lower  
14 quadrant pain, isn't that right?

15 A Yes.

16 Q It's in this chart, correct?

17 A Yes.

18 Q On April 17th, right, Rafael Rodriguez had both right and  
19 left lower quadrant pain, is that right?

20 A And testicular pain.

21 Q And testicular pain, right?

22 A Yes.

23 Q Did the fact that his abdominal pain was both in the right  
24 lower quadrant and the left lower quadrant cause some sort of  
25 confusion, right, in terms of what was happening with Rafael

1 Rodriguez?

2 A When a patient presents with pain in certain area of the  
3 bodies there are different things that you associate, different  
4 diseases that you associate with that pain complaint.

5 Q Did you pick up a book or any reference materials in order  
6 to get an understanding of the significance of Rafael Rodriguez  
7 experiencing pain in both the right and the left lower quadrant?  
8 Did you?

9 A No.

10 Q So at the time of this incident, your mechanical  
11 understanding of medicine was that appendicitis was only  
12 consistent with pain in the right lower quadrant, correct?

13 A Appendicitis typically presents with pain in the right  
14 lower quadrant along with fever, along with nausea and vomiting,  
15 along with an elevated white blood cell count.

16 Q Understood. So you mentioned fever, so now let's talk  
17 about fever. The morning of April 20th Rafael Rodriguez did not  
18 have a fever, correct?

19 A That's correct.

20 Q And so now you know that Rafael Rodriguez had an  
21 appendicitis without a fever, correct?

22 A That's correct.

23 Q And you heard Dr. Brown testify about the extent of the  
24 disease process at the time of surgery, correct?

25 A That's correct.

1 Q Your Honor, can we approach?

2 THE COURT: Certainly. Counsel, please approach.

3 (Sidebar)

4 MS. RAMEAU: Your Honor, can I have a morning break.

5 I --

6 THE COURT: Do you want to take a break?

7 MS. RAMEAU: Yes, please.

8 THE COURT: Certainly.

9 MS. RAMEAU: And, Your Honor, could you -- the white  
10 noise? Okay. Can you admonish the witness that she's not to  
11 talk to her lawyers in the middle of my cross-examination?

12 THE COURT: (Inaudible), Mr. Ninosky.

13 MR. NINOSKY: I understand.

14 MS. RAMEAU: Oh, okay.

15 MR. NINOSKY: Thank you, Your Honor.

16 (End of Sidebar)

17 THE COURT: Members of the jury, we are going to stand  
18 in recess for 15 minutes. I'm going to again caution you that  
19 you should keep an open mind about this case until all the  
20 evidence is in on both sides, so you should refrain from  
21 discussing it with each other or with anyone else, including  
22 members of your family or allow anyone to talk to you about it.  
23 Do not form any opinions about this case until you retire to the  
24 jury room after my instructions.

25 We'll stand in recess for 15 minutes.

1 THE BAILIFF: All rise.

2 (Jury exiting)

3 (Recess taken from 10:19 a.m. to 10:33 a.m.)

4 THE COURT: All parties previously present are once  
5 again present. The jury is present. The witness is on the  
6 witness stand. One party was a little slow getting in, but he  
7 is now present.

8 Ms. Rameau, you may continue with your examination.

9 MS. RAMEAU: Yes, Your Honor.

10 DIRECT EXAMINATION CONTINUED

11 BY MS. RAMEAU:

12 Q Now, what you thought on the 20th that Rafael Rodriguez had  
13 was a small bowel obstruction, correct?

14 A Yes. That's correct.

15 Q But you noted no differential diagnosis in the chart,  
16 correct?

17 A Yes.

18 Q But I'm trying to understand your thought process, right,  
19 because you have no differential diagnosis and you come to the  
20 conclusion that he had a small bowel obstruction, right?

21 A It's not --

22 Q It's withdrawn, Your Honor. I'll withdraw the question.  
23 Now, Ms. McGowan, you're not upset, right?

24 A No.

25 Q Because you're not the one who almost died, right?

1 MR. NINOSKY: Objection, Your Honor.

2 THE COURT: I'll sustain that objection.

3 BY MS. RAMEAU:

4 Q Now I want to talk to you about this thing called a  
5 provider's list, right. On the 17th you scheduled to see  
6 Rodriguez, Rafael Rodriguez, on the 20th. On the 17th, that  
7 Friday, you scheduled to see him on the 20th, correct?

8 A Yes. That's correct.

9 Q That's like a doctor's appointment, right?

10 A Yes.

11 Q Now you knew that Rafael Rodriguez didn't have the ability  
12 to take himself to the hospital. You knew that, right?

13 A Yes.

14 Q You knew that you were his only option, correct?

15 A Yes.

16 Q So knowing full and well that he had no other option, that  
17 he had no other choice, you made a conscious decision to have  
18 him wait for two whole days, right, for the whole weekend,  
19 correct?

20 A It wasn't a conscious decision to not send someone to the  
21 hospital. No, that's incorrect.

22 Q Well, it was your decision, right, to have him scheduled to  
23 see you on the 20th, right? It wasn't my decision, right?

24 A He was scheduled for follow up on the 20th.

25 Q Well, this was a decision that you made, right?



1 A On the 17th.

2 Q On the 17th you decided, right? I didn't make the  
3 decision. You did. To schedule to see him on the 20th,  
4 correct?

5 A Yes.

6 Q So that was a conscious decision that came from you, right?

7 A To schedule him --

8 Q It didn't come from me.

9 A To schedule him for follow up, yes.

10 Q So and those two days that you skipped and not seeing him  
11 happened to be a weekend, right?

12 A Yes.

13 Q Saturday and Sunday, right?

14 A Yes.

15 Q And you were on call, correct?

16 A Yes.

17 Q And now when you're on call no matter where you are, right,  
18 no matter what you're doing, if your presence is necessary at  
19 the jail, you've got to go back, right?

20 A That's incorrect.

21 Q I'll withdraw the question. Now, you're not a lawyer,  
22 right? Are you?

23 A No.

24 Q You're not a mechanic or a businessman, correct?

25 A Yes.

1 Q You're in the business of saving lives, right?

2 A (Inaudible).

3 Q In the business of alleviating pain and suffering, am I  
4 right?

5 A Yes.

6 Q So with all due respect, you don't have the luxury of --  
7 withdrawn. That's withdrawn. I'll move on to some other  
8 things. So, Ms. McGowan, if you were to choose, right, if you  
9 wanted to, tomorrow you could go out into the community at large  
10 and collaborate with some physicians and open up a clinic to  
11 treat the community at large, isn't that right?

12 A Yes.

13 Q And apply your mechanical understand of medicine to the  
14 community at large, isn't that right?

15 A Yes.

16 Q Have you ever heard of the expression, Ms. McGowan, that  
17 medicine is an art?

18 A Yes.

19 Q What do you understand that to mean?

20 A Not every patient is the same. Not every disease is the  
21 same. Not every treatment is the same. All factors need to be  
22 taken into consideration when you're caring for a patient and  
23 their family.

24 Q Nothing further, Your Honor.

25 THE COURT: Thank you very much, Counselor.

1 Mr. Ninosky, you may question the witness.

2 MR. NINOSKY: Thank you, Your Honor. Thank you.

3 CROSS-EXAMINATION

4 BY MR. NINOSKY:

5 Q Before I ask you a little bit about your background, you  
6 were asked at the very beginning if you learned some things from  
7 Dr. Brown, but you weren't asked any questions as to what you  
8 learned, so I'm going to ask you. Did you learn from Dr. Brown  
9 that he said that the nursing staff met the standard of care?

10 A Yes.

11 MS. RAMEAU: Objection.

12 THE COURT: Basis?

13 MS. RAMEAU: Can we approach?

14 THE COURT: Sure. Counsel, please approach.

15 (Sidebar)

16 MS. RAMEAU: I'm sorry, Your Honor.

17 THE COURT: That's okay.

18 MS. RAMEAU: That question, it's objectionable. It's  
19 -- I don't know. I don't understand how he's -- the question --  
20 I am objecting as to form, right. I'm objecting as to  
21 relevance, right. I'm objecting as to the fact that he's  
22 testifying, in essence, in the question and I just don't think  
23 it's a proper question.

24 THE COURT: Mr. Ninosky.

25 MR. NINOSKY: It was one of the first questions on her

1 examination was, "Did you learn something from Dr. Brown?" She  
2 said yes. You never asked a follow up question. I'm asking a  
3 follow up question as to some of the things that Dr. Brown said.  
4 Clearly it's in response to a question that was opened on direct  
5 (inaudible).

6 THE COURT: All right.

7 MS. RAMEAU: Well, and -- yes, I'm sorry, Your Honor.

8 THE COURT: (Inaudible). If it starts to sounds like  
9 you're testifying and just trying to use this witness  
10 (inaudible).

11 MR. NINOSKY: Sure.

12 MS. RAMEAU: Thank you.

13 (End of Sidebar)

14 THE COURT: Counsel, you may proceed.

15 BY MR. NINOSKY:

16 Q Thank you, Your Honor. I'll ask the question again because  
17 I don't think you gave me an answer. Did you learn from Dr.  
18 Brown that the nursing staff met the standard of care?

19 A Yes, I did.

20 Q And did you learn from Dr. Brown that he said that what you  
21 did on April 20th met the standard of care?

22 A Yes, I did.

23 Q And my last question, last question. Did you learn from  
24 Dr. Brown that the original diagnosis by the emergency room  
25 physician was a small bowel obstruction, correct?

1 A Yes.

2 MS. RAMEAU: Objection.

3 THE COURT: Basis?

4 MS. RAMEAU: I'll withdraw it. Withdrawn.

5 THE COURT: Very well. Counsel, you may proceed.

6 BY MR. NINOSKY:

7 Q And I'll just ask this now because it's tied in with that.

8 You were asked if you had a differential diagnosis and you

9 didn't have your record in front of you. May I approach, Your

10 Honor?

11 THE COURT: Certainly, Counsel.

12 BY MR. NINOSKY:

13 Q On April 20th --

14 MS. RAMEAU: Objection. Can we approach, Your Honor?

15 THE COURT: Certainly, Counsel. Please approach.

16 (Sidebar)

17 MS. RAMEAU: It wasn't that she didn't have a record

18 in front of her. She said, "No, I didn't have a differential

19 diagnosis." I don't know what he's trying to do, but the

20 witness is clear in her answer that she didn't have a

21 differential diagnosis. I'm not sure what he's trying to show.

22 THE COURT: (Inaudible).

23 MR. NINOSKY: Exactly.

24 THE COURT: And that would be appropriate (inaudible).

25 MR. NINOSKY: Thank you.

1 MS. RAMEAU: 1:45.

2 (End of Sidebar)

3 MR. NINOSKY: Your Honor, may I approach, please?

4 THE COURT: You may, Counsel.

5 MR. NINOSKY: Thank you, Your Honor.

6 BY MR. NINOSKY:

7 Q Paula, this is from your note and it's page 143. What does  
8 that say?

9 A My assessment is abdominal pain.

10 Q And?

11 A Rule out obstruction. Can I just speak on differential  
12 diagnosis?

13 Q Would you, please?

14 A Let me just say that differential diagnosis are not  
15 documented in patient's medical chart. If there's something  
16 that we think in our mind as we're talking to the patient, as  
17 we're examining the patient, as we're receiving lab results and  
18 input from nursing, input from family, looking at outside  
19 medical records. So it's just a process that's constantly  
20 evolving and we're thinking about it. We do not document. I  
21 mean, I could fill that whole block with a list of differential  
22 diagnosis. That's a waste of my time because I have those in my  
23 mind.

24 Q So you write down what you think is at the top of your  
25 list. Is that kind of a fair statement?

1 A Sure. Yes.

2 Q Okay. Let's --

3 A And at the top of my list was abdominal pain. The patient  
4 was in severe abdominal pain. And I believed at that time he  
5 had an obstruction.

6 Q You indicated severe abdominal pain, correct?

7 A Yes.

8 Q And at any point prior to that point was it brought to your  
9 attention that he was in severe abdominal pain?

10 A No.

11 Q Anywhere in the chart that ever an indication of severe  
12 abdominal pain?

13 A No.

14 Q And we're going to go through some of the specific notes,  
15 but I think it's important that you explain to the jury your  
16 educational background, okay. We haven't really heard you  
17 talking about what your training is.

18 A I am a certified registered nurse practitioner. I began my  
19 nursing education upon graduating from high school. I graduated  
20 in 1995 from Reading Hospital School of Nursing with a diploma  
21 in nursing. At that time, I began working as a registered nurse  
22 and continuing my education at Kutztown University where in 1997  
23 I obtained a bachelor's of science degree in nursing. I  
24 continued to work in med-surge, correctional medicine, as a  
25 pediatric nurse, and also was enrolled in Widener University

1 School of Nursing to obtain my masters of science degree as a  
2 family nurse practitioner, in which I graduated in 1999.

3 Q Describe for the jury what a nurse practitioner is.

4 A I am a registered nurse. I also hold a master's degree and  
5 a certification as a family nurse practitioner. What that means  
6 is I am allowed to talk to patients, conduct a physical exam,  
7 formulate a differential diagnosis, diagnose a patient, and  
8 develop a treatment plan. So I can prescribe your medication.  
9 I can refer you to specialists when something is beyond my scope  
10 of practice and you need outside care. I can order lab results,  
11 x-rays, CT scans, MRIs.

12 Q And how long, Paula, have you worked in correctional  
13 medicine?

14 A I started out in correctional medicine when I was a nursing  
15 student as a mental health worker at a state correctional  
16 facility. I did that from 1993 until 1997 when I entered my  
17 master's program. It was kind of like a part-time job. I  
18 worked as a mental health worker and as an RN and then I had to  
19 leave that position because I needed to dedicate more time to my  
20 job as an RN at Reading Hospital as well as my master's program.

21 Q And what facility -- did you say what facility you worked  
22 at for the mental health side there?

23 A I worked at SCI Prattville.

24 Q That's a state correctional facility.

25 A Yes.



1 Q Okay. Now how long have you worked for PrimeCare?

2 A I've been employed with PrimeCare Medical since 2003.

3 Q So from 2003 until the present time, you're within  
4 correctional medicine.

5 A Yes.

6 Q And you were asked questions on direct about that you could  
7 go out and put your shingle out, so to speak, treat people in  
8 the community, is that correct?

9 A That is correct.

10 Q So you've chosen to provide treatment to people that are  
11 incarcerated, correct?

12 A I worked as a family nurse practitioner in a family  
13 practice office in Barnesboro, Pennsylvania. I also worked at  
14 Exeter Healthways in Exeter, Pennsylvania where unfortunately  
15 some of the patients that I provided care to there became  
16 incarcerated at the Berks County Jail, so they were my patients  
17 in private practice and they became my patient at the prison. I  
18 mean, even now I left there in 2003 and just this year I had a  
19 patient that was a pediatric patient of mine that's now  
20 incarcerated, which is very sad, but it does happen.

21 MS. RAMEAU: Objection as to relevance, Your Honor.

22 THE COURT: I think she's finished with the answer.  
23 I'll overrule the objection.

24 THE WITNESS: I also am employed with a company --

25 MS. RAMEAU: Objection.

1 THE COURT: The objection is sustained to the extent  
2 that I think Mr. Ninosky is going to ask another question.

3 BY MR. NINOSKY:

4 Q Did you have additional employment? Is that what you're  
5 going on with?

6 A Yes. I currently work for a company called Logistics  
7 Health Incorporated. They're based out of Wisconsin and they  
8 have a contract with the Department of Defense. So maybe a few  
9 times a month to a few times a year I will go out to reserve  
10 centers, guard bases, and provide care to service members that  
11 are in the Army National Guard or the Army Reserve, Navy  
12 Reserve.

13 MS. RAMEAU: Objection. Can we approach, Your Honor?

14 THE COURT: Certainly, Counsel.

15 (Sidebar)

16 MS. RAMEAU: He's got her talking about (inaudible).  
17 I think he's trying to elicit some sympathy that the jurors will  
18 be able to somehow relate to this witness, that they have family  
19 members in the Army. I think it's improper. I don't think Your  
20 Honor should allow it.

21 THE COURT: Mr. Ninosky?

22 MR. NINOSKY: She's talking about her employment  
23 experience.

24 MS. RAMEAU: Which is irrelevant if it doesn't pertain  
25 to her medical appointments or jobs. It's not relevant. It's

1 got nothing to do with this case.

2 THE COURT: (Inaudible).

3 MS. RAMEAU: But I think he'd done enough of that,  
4 Judge.

5 THE COURT: I don't think he's done too much though,  
6 so I'm overruling the objection at this time.

7 MR. NINOSKY: Thank you, Your Honor.

8 (End of Sidebar)

9 THE COURT: Mr. Ninosky, you may continue, sir.

10 BY MR. NINOSKY:

11 Q Paula, you weren't able to complete that answer. So,  
12 again, what is that other company you work for and what do you  
13 do?

14 A Logistics Health Incorporated.

15 Q Okay.

16 A Basically it's a reserve readiness program and what it  
17 helps the military commander of the unit do is determine how  
18 many of their servicemembers are immediately deployable and how  
19 many need additional medical care.

20 Q Now, the Berks County Jail, why don't you give the --  
21 because I don't think there is any way for Berks County. Why  
22 don't you describe for them just kind of how big the facility  
23 is, how the medical department is set up, that type of thing,  
24 and give a little bit of background.

25 A The facility is a 1,200 bed facility. We have inmates that

1 are incarcerated at the county level. We accept inmates that  
2 have violated their state parole. So we are also a housing  
3 facility for state parole offenders. We also house inmates that  
4 come from other counties where overcrowding is an issue and they  
5 don't have enough room in that particular facility in that  
6 county. So we have about 1,200 beds. We typically flow through  
7 6,000 people a year. Medically, we sometimes encounter 300  
8 people a day through sick call, provider line, dental line,  
9 psychiatric line.

10 We're staffed 24 hours a day with nursing, RNs and LPNs.  
11 We have a health service administrator who is an RN who kind of  
12 is the umbrella of the medical department. We have a director  
13 of nursing. We have an x-ray technician that comes into the  
14 facility to provide x-rays. We have medical assistants,  
15 emergency medical technicians, as I said, RNs, LPNs. We have a  
16 dentist, a psychiatrist, psychologists. We have physicians that  
17 come twice a week and myself and a physician's assistant.

18 Q Now you said earlier that on Wednesdays you aren't at the  
19 Berks County Jail. Did I hear that correctly?

20 A That's correct.

21 Q Where are you on Wednesdays?

22 A I'm at the Schuylkill County Prison. I cover that facility  
23 once a week onsite and then I cover call for that facility 24  
24 hours a day 7 days a week.

25 Q You had testified earlier -- I think I made a note -- that

1 you can't possibly get involved with every patient complaint.

2 Can you explain for the jury your answer, please?

3 A Patients submit sick calls. Sick calls are then evaluated  
4 by the nursing staff. And it's, as we heard before from Sarah  
5 Hardy, I believe, sick call is triaged through the nurses. So  
6 they will bring to our attention people that they feel need to  
7 be seen by the provider or people that at some point request to  
8 be seen by the provider.

9 Q Now, you were asked about abdominal -- this case has some  
10 instances of abdominal complaints of pain. How common of a  
11 complaint is that by the inmates in the prison?

12 A Unfortunately, abdominal pain, heartburn, constipation,  
13 those are very, very common. We're a lockdown facility, so  
14 patients are locked down 20 hours a day. That can affect the  
15 motility of your gut contributing to constipation. The food  
16 there for many people is unpalatable. It's too spicy. It's too  
17 bland.

18 So a lot of times the heartburn, so they can get heartburn  
19 from the medication. They can get constipation from the  
20 lifestyle. You know, there's one toilet, so they're in a cell  
21 with another person and they have to defecate in front of that  
22 other person. Sometimes that can contribute to constipation.  
23 And all of that together can contribute to abdominal pain in  
24 addition to medication that we may prescribe.

25 Q So it's something you've seen many times over the years?

1 A Absolutely.

2 Q You said it's a 1,200 bed facility and you went through all  
3 the different types of providers that come provide care there.  
4 What's the range of acuity as to the types of patients that you  
5 folks are dealing with on a day in and day out basis?

6 A Well, I always compare it to like your healthcare  
7 provider's office. That's essentially what I do. I'm their  
8 primary care provider. Unfortunately, sometimes we're the only  
9 primary care provider they have. But we also treat a lot of  
10 people that are detoxing from drugs and alcohol, which is  
11 unfortunate. We will treat -- we will be the liaison, the  
12 collaborator, for patients that have cancer, patients -- we send  
13 patients to the hospital that have heart attacks and they come  
14 back and they need follow up care with cardiology. They can  
15 leave our facility and --

16 MS. RAMEAU: Objection, Your Honor. Can we approach?

17 THE COURT: Certainly, Counsel. Please approach.

18 (Sidebar)

19 MS. RAMEAU: Now -- yes, Your Honor. Now this is  
20 becoming improper bolstering. He's got her sitting up there  
21 talking about how we do this and we're wonderful and we do that  
22 and we treat this one and that one and do such a good job. It's  
23 improper. He's allowing the witness to bolster herself and it's  
24 not proper. I think it should stop.

25 THE COURT: Mr. Ninosky.

1 MR. NINOSKY: It goes to the medical process. She is  
2 familiar with that in the prison, types of patients that she  
3 treats. (Inaudible) something very similar, very complicated.  
4 It goes to her medical acumen, which is being questioned in this  
5 case by the allegations by the Plaintiff.

6 THE COURT: It goes to the background (inaudible). It  
7 goes to the background of the facility (inaudible).

8 MS. RAMEAU: Fine. Okay.

9 (End of Sidebar)

10 THE COURT: Mr. Ninosky, you may proceed, sir.

11 BY MR. NINOSKY:

12 Q You weren't able to complete your answer. Can you complete  
13 your answer?

14 A We'll send patients out for dialysis three days a week. If  
15 a patient comes into the facility and they're receiving care  
16 from another healthcare provider, whether it be a surgeon, if  
17 they've had surgery within the time frame before they came into  
18 the facility, we'll send them to their surgeon for follow up  
19 care. So it's anything from a laceration, a cut on the arm that  
20 requires suturing, to someone that has cancer.

21 Q It's just a full range of types of conditions --

22 A It's a full range.

23 Q -- that you deal with regularly?

24 A Right. But it is really like a primary care setting, a  
25 community setting. Anything emergent, we transfer immediately

1 to the emergency room.

2 Q And, again, that's comparable for a family doctor's office.

3 A Uh-huh. Absolutely.

4 Q Which you've worked in over the years?

5 A Yes.

6 Q Now, let's talk a little bit about appendicitis.

7 A Okay.

8 Q Have you trained as to what the classic symptoms are for an  
9 appendicitis?

10 A Yes.

11 Q What are they?

12 A Right lower quadrant pain, fever, nausea, vomiting, and  
13 rebound tenderness.

14 Q That's something that you have been trained in and you have  
15 experienced over the years.

16 A Yes.

17 Q And you told us that abdominal complaints just generally  
18 are one of the most complained of things that you're confronted  
19 with, is that correct?

20 A Yes.

21 Q And did you remember when Dr. Brown said that it's  
22 difficult to diagnose an appendicitis?

23 A Yes.

24 Q Now your involvement with Mr. Rodriguez started during the  
25 evening of April 16th, correct?



1 A Yes.

2 Q And you received a phone call from Suzy Roberts, right?

3 A Yes.

4 Q Again, is that atypical for you to receive a phone call?

5 A No.

6 Q And when you're on call, you kind of expect to get some  
7 phone calls?

8 A Yes.

9 Q Okay. And even before we start talking about it, I think  
10 it's important to explain to the jury kind of how the process is  
11 set up for call and kind of the things, how you work with the  
12 nursing staff. So explain to the jury call and how it works.

13 A There's a provider on call 24 hours a day, 7 days a week  
14 when we are not inside the facility. And the nursing staff can  
15 call us for any reason at all. So they typically call on  
16 patients that just come into the facility and need medication  
17 orders or detox orders, but they will also call us if they want  
18 us to modify our treatment, if they'd like us to consider  
19 modifying our treatment plan or if they're concerned about a  
20 patient, they need medication for that patient, or they believe  
21 or the patient requests medication and they believe that we may  
22 need to order them medication that they cannot provide for them.

23 Q And in this particular case, we know that there were phone  
24 calls about medication, correct?

25 A Correct.

1 Q There was a phone call about vital signs.

2 A Correct.

3 Q And there was a phone call dealing with abdominal pain.

4 A Correct.

5 Q And you heard the nursing staff testifying that's testified  
6 so far that they're trained to provide to you information about  
7 abnormal vital signs and such.

8 A Correct.

9 Q And if there's a complaint that they feel is outside their  
10 scope.

11 A Yes.

12 Q Okay. Now, when you received a call from Suzy Roberts,  
13 what information was provided to you?

14 A That the patient had some GI upset, that they were taking  
15 Naproxen, which you've heard before can cause -- any anti-  
16 inflammatory, that that can cause some heartburn, some upset  
17 stomach. And so we reviewed the vital signs which were stable  
18 and ordered medication.

19 Q Now, Paula, the -- in fact, I think, if we could pull up  
20 60, please. The top portion first. And was there questioning  
21 about the type of pain that he was in?

22 A Stomach pain.

23 Q Okay. And what was noted as far as the intensity?

24 A Moderate.

25 Q Is there any discussion about vomiting?

1 A No. Actually, there was no vomiting.

2 Q And that would be a specific question that would be asked  
3 of a patient?

4 A Absolutely.

5 Q Paula --

6 MS. RAMEAU: Objection, Your Honor. The document  
7 speaks for itself.

8 THE COURT: The objection is overruled.

9 BY MR. NINOSKY:

10 Q Paula, you've been working at the Berks County Jail for a  
11 number of years and you're familiar with these forms, right?

12 A Correct. Yes.

13 Q And are these forms set up in, I think we heard yesterday,  
14 in the SOAP format, correct?

15 A Correct.

16 Q Are they set up in a way so that as to have the nursing  
17 staff obtain information that's important for you then to  
18 utilize your clinical judgment?

19 A For them to --

20 MS. RAMEAU: Objection. Can we approach?

21 THE COURT: Sure. Counsel, please approach.

22 (Sidebar)

23 MS. RAMEAU: Is the form set up in a way to allow you  
24 to elicit -- I mean, I don't know where to start. I think -- I  
25 just don't know. I think the question is improper. And I've

1 got a lot of basis. I just can't articulate them right now. Is  
2 the form set up to allow you to elicit -- he can just ask the  
3 witness what the form allows her to elicit, right, without the  
4 predicate.

5 THE COURT: Mr. Ninosky.

6 MR. NINOSKY: I think the questions (inaudible).

7 THE COURT: Yeah. And (inaudible).

8 MS. RAMEAU: Uh-huh. He does.

9 THE COURT: What he does is the document allows your  
10 witness to (inaudible) and with respect to how these forms are  
11 designed and (inaudible). This one in particular at the top is  
12 actually called an abdominal pain form. So it's used presumably  
13 (inaudible) every time the patient has a problem.

14 MS. RAMEAU: That's fine, Your Honor. I'll withdraw  
15 the objection. It's withdrawn.

16 (End of Sidebar)

17 THE COURT: Mr. Ninosky, you may proceed, sir.

18 BY MR. NINOSKY:

19 Q Thank you, Your Honor. I'll ask it again, okay. Is the  
20 form set up in a way to elicit information to provide to a  
21 provider so that the provider could utilize clinical judgment in  
22 coming up with a treatment?

23 A Absolutely.

24 Q Or issuing orders.

25 A Yes.

1 Q Okay. And as we heard earlier, and I'll try and move it  
2 along, subjective is kind of what the patient says.

3 A It's always what the patient says.

4 Q Objective is what?

5 A Objective is what you find on examination.

6 Q And then as far as an assessment, what does that mean?

7 A For me, that means creating a diagnosis.

8 Q For this type of form, what does that mean?

9 A That means a group of things that the nurse could select  
10 from. It's not really a diagnosis, but more of a symptom.

11 Q And then the P is for the plan as to going forward.

12 A The plan, correct.

13 Q Okay. So, at this point, there was a complaint of nausea,  
14 but there was no complaint of vomiting.

15 A Correct. And that was in the evening on the 16th.

16 Q And did everything else from, as you said, a gut  
17 perspective, as far as bowel movements, urination and such, does  
18 that appear to be normal?

19 A Yes.

20 Q And you said the vital signs were normal.

21 A Yes.

22 Q All right. Now, if you could please go to the bottom of  
23 the form. Paula, we've heard a little bit about bowel sounds,  
24 but you're going to talk about it again, I think, when you see  
25 him on the 20th. What are bowel sounds?

1 A Bowel sounds are, as you guys have been told before by, I  
2 believe Sarah, are just sounds that your belly makes when you're  
3 listening with a stethoscope for movement of stool through your  
4 colon.

5 Q And why is that something important for a healthcare  
6 provider such as yourself to know?

7 A Bowel sounds indicate to us that the belly is working well.  
8 If you have active normal bowel sounds, your belly is working  
9 well. There's nothing urgently acutely wrong with you. When  
10 you consider that in combination of other factors, vital signs,  
11 what the patient is reporting to you, and then active bowel  
12 sounds.

13 Q And if you could go to 61, please, the top. It says  
14 palpation of the abdomen. Describe what that entails.

15 A Touching the abdomen.

16 Q And what's the purpose of doing that?

17 A To see how the abdomen feels. You know, if you've had a --  
18 experienced a pregnancy with one of your family members, you  
19 touch the baby. That's palpating the abdomen. In medicine, you  
20 want to touch the belly to see if it hurts somewhere or if there  
21 -- sometimes in a profoundly constipated patient you can feel  
22 stool in the belly, like a lumpy, hard area.

23 Q And, Paula, this form is set up, right across the very top  
24 it says, "Palpation of the abdomen. If reveals rigid, guarding,  
25 or rebound tenderness, provider must be notified," correct?

1 A Yes.

2 Q What's the significance of those particular findings as to  
3 why a provider would need to be called?

4 A Well, again, if, you know, you're -- as the provider, if  
5 I'm hearing that the patient has a rigid abdomen or if they're  
6 guarding, they're kind of like holding their hand over their  
7 belly or they have rebound tenderness and their vital signs are  
8 abnormal and they're vomiting, you take all of that into  
9 account. But that's something that if a nurse on her exam  
10 completes, even if everything else is completely normal, she  
11 must still review that finding with a provider.

12 Q And we know that the quadrants were palpated by Suzy  
13 Roberts, correct?

14 A Yes.

15 Q And it was reported to you where that pain was.

16 A Yes.

17 Q What was reported to you, Paula?

18 A Upper, upper.

19 Q What's the clinical significance potentially of upper  
20 abdominal pain?

21 A Well, when I looked at his vital signs being normal, the  
22 fact that he was given Naproxen, also the report said he  
23 complained of heartburn. The upper abdominal pain led me to  
24 believe that he had gastritis. And when Dr. Brown was here, we  
25 can -- you know, I recall him mentioning as he spoke about many

1 differential diagnosis --

2 MS. RAMEAU: Objection. Can we approach, Your Honor?

3 THE COURT: Certainly, Counsel.

4 (Sidebar)

5 MS. RAMEAU: Your Honor, I think it's improper for  
6 this witness to now try and emphasize testimony from Dr. Brown  
7 in her own testimony. I just --

8 MR. NINOSKY: She's not an expert.

9 MS. RAMEAU: She's not an expert. It's just not  
10 proper.

11 THE COURT: I'll sustain that objection.

12 MS. RAMEAU: Your Honor, will you strike it?

13 THE COURT: I will.

14 MS. RAMEAU: Thank you.

15 (End of Sidebar)

16 THE COURT: Ladies and gentlemen of the -- lady and  
17 gentlemen of the jury -- excuse me -- you are to disregard the  
18 last statement from the witness regarding what Dr. Brown had  
19 testified about gastritis. Is there any juror that cannot  
20 follow that instruction?

21 Very well. Mr. Ninosky, you may proceed.

22 BY MR. NINOSKY:

23 Q What is gastritis?

24 A Gastritis is irritation of the lining of your stomach.

25 Q And can Naproxen cause an irritation in the lining of your



1 stomach?

2 A Naproxen can cause that.

3 Q Because what type of medication is it again?

4 A It's an anti-inflammatory.

5 Q So with the information that --

6 MS. RAMEAU: Objection, Your Honor. Can we approach?

7 THE COURT: Certainly, Counselor.

8 (Sidebar)

9 MS. RAMEAU: Your Honor, if he's looking to use this  
10 witness as an expert, he needs to lay the proper foundation,  
11 make an application, and have her admitted as an expert witness.  
12 Because she's testifying about matters that are beyond -- I  
13 mean, she's not an expert.

14 THE COURT: Well, he's not asking her to form an  
15 opinion. He's asking her within her own expertise how she  
16 treated the patient and why she (inaudible).

17 MS. RAMEAU: Okay.

18 (End of Sidebar)

19 THE COURT: Mr. Ninosky --

20 MS. RAMEAU: It's withdrawn, Your Honor.

21 THE COURT: Excuse me.

22 MS. RAMEAU: The objection is withdrawn.

23 THE COURT: Oh, very well. Mr. Ninosky, you may  
24 proceed, Counselor.

25 BY MR. NINOSKY:

1 Q So what -- I don't think you completed that answer either,  
2 so let's start again. What type of medication is Naproxen?

3 A It's an anti-inflammatory.

4 Q And I think you were going to tell us can it cause  
5 irritation of the stomach?

6 A Yes.

7 Q Okay. So what was your thought?

8 A So in everything that was being conveyed to me, the patient  
9 was taking Naproxen and Robaxin for back pain. The vital signs  
10 were completely normal. The pain was in the upper quadrant. It  
11 had started in a relatively recent time frame. In my mind, one  
12 of the differential diagnosis I had which is nowhere documented  
13 in the chart because I said before we keep those in our mind, I  
14 attributed all of that to gastritis.

15 And that was why I developed my treatment plan. DCing the  
16 Naproxen, which he had already received that evening because the  
17 nurse had called me after she had administered her med pass, so  
18 the stopping of the Naproxen would have started the next day.  
19 And I ordered Maalox. Even though he said that did not work  
20 initially, that's not often uncommon. I mean, you can take Tums  
21 at home in the community and it won't work and then you need to  
22 take something like Zantac or Pepcid to help it. So I ordered  
23 him also Pepcid and Prilosec to help calm down the gastritis  
24 that Naproxen was causing.

25 Q You had said earlier that the medication had been

1 administered as far, as the Naproxen, in the evening med pass.

2 A Correct.

3 Q So just within a couple of hours of when you would have  
4 gotten this phone call?

5 A Med pass is typically, to my understanding, after 7:00. I  
6 do not do a med pass. I don't know that for certain, but it's  
7 after 6:00, 7:00, and then I received that call after that time  
8 frame.

9 Q Now from your reviewing of the chart, were these orders  
10 carried out?

11 A Yes.

12 Q Now sometime a little bit later did you receive another  
13 phone call?

14 A Yes.

15 Q And who called you this time?

16 A I believe the next phone call I received was from Allison  
17 Young, and that was on third shift. So third shift is between  
18 the hours of 10:00 in the evening to 6:30 in the morning.

19 Q Could you pull up 203, please? Paula, I'm going to -- I'll  
20 just come up to you. The jury has seen it before. Was that the  
21 phone call from Allison Young?

22 A Yes.

23 Q And what was the reason you were called?

24 A The only reason, based on looking at the note, that I was  
25 called was because the patient had abnormal vital signs.

1 Q Were the vital signs noted?

2 A Yes. The blood pressure was 100/60. That's normal. The  
3 heart rate was 48 and the pulse ox was normal and the  
4 temperature was normal. The abnormal vital sign was the heart  
5 rate of 48, but many of us -- to me, that was not significant  
6 because many of us, when we're sleeping, our heart rate drops.  
7 So if it's third shift, if it's 10:00 to 6:30, I'm thinking in  
8 my mind, well, the patient's heart rate is low because they were  
9 sleeping. I, at that time, did not know why those vital signs  
10 were obtained, so I thought, well, I better have the nurse bring  
11 the patient to the medical department and assess him and then I  
12 requested that I be called back with that assessment.

13 Q So even though it's potentially in the middle of the night,  
14 you actually solicited another phone call to get follow up  
15 information on the patient?

16 A Yes, because I didn't know what to do with the information  
17 I received at that time.

18 Q So you needed more information?

19 A I needed more information, yes.

20 Q And, Paula, did you receive more information?

21 A Yes.

22 Q And there was another phone call, correct?

23 A Yes.

24 Q 204. First of all, Paula, I see a blood pressure there.

25 A Yes.

1 Q Is that actually a better blood pressure than it was  
2 before?

3 A It's stable. I mean, it's not better. It's not worse.  
4 It's within range.

5 Q Within normalness?

6 A Right. It's within normalness.

7 Q How about the pulse?

8 A The heartrate is fine, 56. We like -- you know, your  
9 heartrate should be 60 to 120. It's 56. It's still at a time  
10 when a patient should be sleeping, so they should have a lower  
11 heartrate.

12 Q And we've heard afebrile. What does that mean?

13 A No fever.

14 Q And you had indicated before a fever can be a sign of  
15 appendicitis, right?

16 A Right.

17 Q Right. Could be a whole host of other reasons too.

18 A Correct.

19 Q All right. So she's telling you that there is no fever.  
20 And talk about the vomited once in medical.

21 A It was reported to me that the patient vomited once in  
22 medical. No blood in the vomit. It says, "States has been  
23 going on for two days. Abdominal assessment performed. Bowel  
24 sounds are present in all four quads." Again, that's listening  
25 with your stethoscope. The abdomen was soft and rounded. It

1 was tender to touch, but there was no rebound tenderness.

2 Because the nurses are really taught if there is rebound  
3 tenderness, as you saw in that form, that it's something that  
4 needs to be reported to a provider. So we always assess for  
5 rebound tenderness.

6 Q And what --

7 A The pain seems to be located in the center of the abdomen  
8 and radiate out towards the back. So I had gotten a call --  
9 this is probably the third call I received.

10 Q Yes.

11 A In, let's say, like a six to eight hour time frame. You  
12 know, he had some abdominal discomfort at that time. He was  
13 vomiting, nausea. The vital signs were all stable though.  
14 Okay. It could still be gastritis. It could be  
15 gastroenteritis. At that point I was like, "Okay. It's the  
16 middle of the night. Let's have the patient just rest in  
17 medical and we'll see what happens." So when I say have him sit  
18 in medical, what you need to know is our medical unit is fairly  
19 big. We have two exam tables which are staggered when you go in  
20 a healthcare provider's office which are not --

21 MS. RAMEAU: Objection. Can we approach, Your Honor?

22 THE COURT: Certainly, Counselor.

23 (Sidebar)

24 MS. RAMEAU: If I heard the witness correctly, I think  
25 that she's trying to -- when she says our examining room is --

1 our capacities are very limited. I don't know if she's trying  
2 to lead the jury to believe that there is some lesser standard  
3 that's acceptable within a correctional facility in terms of  
4 what's appropriate, so that's really my concern because that  
5 wouldn't be proper.

6 THE COURT: Mr. Ninosky.

7 MR. NINOSKY: She's going to say the reason why he  
8 slept in a metal chair is because there's only so much space in  
9 the room. That's what she's going to say.

10 MS. RAMEAU: Okay. I'll withdraw. I'll withdraw it,  
11 Judge.

12 (End of Sidebar)

13 THE COURT: Mr. Ninosky, you may proceed, sir.

14 BY MR. NINOSKY:

15 Q Do you remember where you were in your answer?

16 A So it has two exam tables. That's where we see our  
17 patients, like when you go into your healthcare provider's  
18 office. We then have two dental chairs. We also have a bunch  
19 of hard metal benches and some hard plastic chairs. So these  
20 are all the places that the patient can be in the medical unit.  
21 When we're uncertain as a provider as to how to proceed with a  
22 patient, we will lay them in the dental chair because that's the  
23 most comfortable chair within the department outside of a cell.

24 So we kind of let the patient stay in the dental chair for  
25 a little while. We give them a blanket because it's cold in

1 there and we just continue to monitor them. And that's what I  
2 requested by having him sit in medical. He had just received  
3 Maalox, Pepcid, and Prilosec a few hours before that. He had  
4 already received the Naproxen, which I believed was contributing  
5 to his discomfort. I wanted to kind of see what he would do  
6 with eating and drinking. Was this a stomach virus? Was this  
7 something else? Were the vital signs going to become abnormal?  
8 Was the patient going to have a lot more pain?

9 Because also in that dental chair is the patient's ability  
10 to sit up, move around. They can walk to the nurse's station.  
11 There's an officer's station right there. So it's kind of like  
12 you're going to see how they proceed through the course of the  
13 time period. You know, and some people will just lay there for  
14 hours and not move at all and other people are standing, holding  
15 their back, holding their belly because they're uncomfortable.  
16 So it's just -- I guess it's kind of like an ER room where he  
17 just like watch them and see what happens.

18 And so then I did want them to see if he responded to  
19 eating and drinking something and I ordered lab work for that  
20 morning. Because now at this time it has to be after 12:00.  
21 I'm not certain of what time it is, but I'm pretty sure it's  
22 after 12:00 and stat lab work would be 4:00 in the morning they  
23 would draw the bloodwork.

24 Q I was just going to say explain to me how --

25 A Yeah.



1 Q -- or let's back up. Let's talk about routine lab work.  
2 How does it work within the prison environment?

3 A Lab work is drawn by the medical assistants typically on  
4 third shift unless we need it drawn at some other time like  
5 would be stat. Like if I have a patient during the day that I  
6 think is not doing well, I'll be like, okay, I'll find a medical  
7 assistant because I'm in the building. I'll be like, "You need  
8 to come and get the bloodwork. You need to do it now. Draw the  
9 bloodwork now. I don't want it to wait until Tuesday to get  
10 drawn with routine bloodwork." Routine bloodwork in our  
11 facility is drawn on a Tuesday or Wednesday. Why that is, I  
12 can't explain it. It's just a day that we picked to order  
13 routine bloodwork.

14 Q So stat means you want it drawn that day?

15 A Right.

16 Q Okay. And that's what happened, we know, correct?

17 A It's a little bit different. A lot of people think, like  
18 oh, ER, what is stat in the ER, what is stat in the hospital.  
19 It's not the same in the correctional facility.

20 MS. RAMEAU: Objection. Can we approach, Your Honor?

21 THE COURT: Sure, Counsel.

22 (Sidebar)

23 MS. RAMEAU: Yes. Is this witness testifying that  
24 there is somewhat of a lesser standard of care that applies to  
25 inmates incarcerated in the correctional facility? That's --

1 first of all, it's not true. Second of all, it violates the  
2 Constitution. Third of all, it's improper.

3 THE COURT: I think she was trying to explain what the  
4 word stat means in the prison environment (inaudible) in the  
5 emergency room (inaudible).

6 MS. RAMEAU: But stat means stat, Your Honor.

7 THE COURT: We've heard this before. (Inaudible).

8 MS. RAMEAU: Okay. Okay. I understand, Your Honor.  
9 I'll withdraw it. It's withdrawn.

10 (End of Sidebar)

11 THE COURT: Mr. Ninosky, you may proceed, sir.

12 BY MR. NINOSKY:

13 Q I think you were saying that stat in the correctional  
14 facility is a little different than when you're sitting in the  
15 emergency room of a hospital.

16 A Well, I want the jury to understand that. It's not --

17 Q Please. I want you -- that's why I want you to answer the  
18 question.

19 A When you're in a hospital your stat is right then and there  
20 with results within two hours. You might have belly pain and go  
21 to your healthcare provider's office and they give you a lab  
22 slip for blood and they say to you, "Get this done today."  
23 That's similar to my order for stat CBC and COD. Let's get it  
24 done today.

25 Q And we'll talk about the labs. Well, let's talk about the

1 labs now. Did it happen? Were they drawn?

2 A Yes.

3 Q Explain how things generally work for labs that you order  
4 off hours or really at any other time.

5 A As I said before, labs are drawn by the medical assistant  
6 typically on third shift, which is before 6:00 in the morning.  
7 I think --

8 Q Let's talk about how you get the results.

9 A Because -- and we order the labs before 6:00 in the morning  
10 because you have to be fasting for many of the labs, blood  
11 sugar, cholesterol. So how do we get the results? The results  
12 are printed off of the computer, off of the printer the next day  
13 if it's during the week or on a Monday if it's a weekend. Now,  
14 if there is an abnormality that is clinically significant, okay,  
15 the lab will call us. As I said before, will call the nursing  
16 staff before 6:00 in the morning and report that. They take the  
17 nurse's name down and record it through their reporting and then  
18 it is also faxed to the department. So if there's a critically  
19 abnormal lab, no matter whether it's a Saturday, a Sunday, a  
20 Friday, or a Thursday, it's going to be reported to the nursing  
21 staff which in turn are going to report it to us.

22 Q You were shown the top portion of the document on your  
23 direct exam. I just want to hone in there on a couple of things  
24 that I don't think you were asked about. You were asked  
25 questions about the glucose, and then there's (inaudible) BUN,

1 and also (inaudible).

2 A They're not clinically significant abnormalities.

3 Q How can you say that?

4 A Because the lab establishes -- and what that is, I do not  
5 know. The lab establishes what they call to report as abnormal.  
6 But what I can tell --

7 MS. RAMEAU: Objection. Can we approach, Your Honor?

8 THE COURT: Certainly, Counselor.

9 (Sidebar)

10 MS. RAMEAU: If she doesn't know what the values are,  
11 right, how is she going to sit in here and interpret it, the lab  
12 did this and the lab did that, but they're not significant  
13 because. She just testified that she doesn't know. She's not a  
14 hematologist.

15 THE COURT: I think what she testified was that she  
16 doesn't know what parameters they set up for (inaudible). I  
17 think the next question is going to be why does she not consider  
18 that abnormal even if (inaudible).

19 MR. SALEEM: But she's just -- she's stating that the  
20 lab makes a determination as to when to call her, but the only -  
21 -

22 THE COURT: No, the lab never calls her.

23 MR. SALEEM: But no, Your Honor. She said that if the  
24 lab finds something that's clinically -- well, they will call  
25 the hospital or whatever, or the jail. This own document, it

1 has clinical abnormalities. So now she's trying to interpret  
2 the mind of the lab as to when they're going to make a  
3 determination as to when to call or not when their own lab  
4 report has clinical abnormalities. So she's trying to ascertain  
5 --

6 THE COURT: (Inaudible).

7 MS. RAMEAU: So I can do that at recross?

8 THE COURT: That's right. Yeah.

9 (End of Sidebar)

10 THE COURT: Mr. Ninosky, you may proceed, sir.

11 BY MR. NINOSKY:

12 Q Did you receive any phone call about any abnormality?

13 A No.

14 Q Any reason to believe that this is something that the lab  
15 would call to say was clinically significant?

16 A Since 2003, the lab has never called with that.

17 Q Let's go to the bottom of 94, please. And I know we're  
18 getting a little bit ahead of the timeline, but since we have it  
19 up I'm going to bring up the portion where the white blood count  
20 is. It's WBC, what does that mean?

21 A White blood cell count.

22 Q And there's a range there?

23 A Uh-huh.

24 Q Correct?

25 A Uh-huh.

1 Q You have to say something for me.

2 A It's within normal range. And I can guarantee that an  
3 elevated white blood cell count is called to the facility. If  
4 someone's hemoglobin and hematocrit --

5 Q Go ahead. Stand up.

6 A These numbers here, if they are low, they are called to the  
7 facility. There's also part of it called a platelet that's down  
8 lower that helps with your blood clotting. If that is low that  
9 is called to the facility. Those -- what I believe is called to  
10 the facility, as in my experience been called at home then that  
11 something is high or low as abnormal, are things that are urgent  
12 emergent. I've been called at home with a pregnant woman's  
13 white blood cell count of 19,000 and I've said, "We need to call  
14 the OB."

15 Q Now, one other thing. Obviously a white blood count of 7.8  
16 is within a normal range too, isn't it?

17 A Correct.

18 Q Okay.

19 MS. RAMEAU: Objection.

20 THE COURT: Overruled.

21 MS. RAMEAU: Witness is not an expert.

22 THE WITNESS: Well, the range --

23 MS. RAMEAU: Not in hematology. She's not.

24 THE COURT: The objection is overruled.

25 BY MR. NINOSKY:

1 Q Paula, is 7.8 within the range on the document?

2 A The range is there.

3 Q Now, Paula, you were asked a question about there being no  
4 document in the chart about Mr. Rodriguez being able to drink  
5 and also to keep food down. Do you remember that question?

6 A Yes.

7 Q And then you were handed a stack of papers and --

8 A Yes.

9 Q -- there was nothing in that stack, was there?

10 MS. RAMEAU: Your Honor, can we approach?

11 THE COURT: Certainly. Counsel, please approach.

12 (Sidebar)

13 MS. RAMEAU: That question was withdrawn, Mr. Ninosky,  
14 was withdrawn.

15 THE COURT: (Inaudible).

16 MS. RAMEAU: Yes, Your Honor. That question was  
17 withdrawn, okay. I withdrew it clearly on the record in front  
18 of the jury, so he shouldn't be making reference to that because  
19 that's not proper. Technically, it's not.

20 THE COURT: Mr. Ninosky.

21 MS. RAMEAU: It's not funny, not funny.

22 MR. NINOSKY: Your Honor, first of all, there's been  
23 nonstop objections. Virtually everything has been objected to.  
24 Virtually all of them have been overruled. We're starting to  
25 see a pattern of obstructionism here which I object to.

1 Secondly, she laid exactly the predicate. I'm asking this  
2 witness if there is a (inaudible). That's all we're doing here.

3 THE COURT: (Inaudible). The objection is overruled.

4 (End of Sidebar)

5 THE COURT: Okay, Counselor. You may proceed.

6 BY MR. NINOSKY:

7 Q Do you remember the question about no document talking  
8 about his being able to keep liquids and solids down? Okay.  
9 I'm showing you what's document 184, page number 184. Do you  
10 see that?

11 A Yes.

12 Q First of all, Paula, let's look at the information, it says  
13 task request. Do you see that?

14 A Yes.

15 Q We've heard about tasks a little bit, but I think here  
16 we're actually looking at one in the system. Explain it for the  
17 jury, please. The process first and then we'll get into that.

18 A Tasks are our way of communicating patients' medical needs.  
19 So if the first shift tasks, they're scheduled to be seen,  
20 physically touched, talked to. The second shift task is  
21 something that we're alerted to, whether it's a patient  
22 complaint or something the nurse wants us to review or for us to  
23 even review the vital signs that were taken by the nurses.

24 Q Okay.

25 A And that's typically the task process.



1 Q And in this particular timeline, you had received a couple  
2 of phone calls in the middle of the night.

3 A Correct.

4 Q And Allison Young is working the third shift, correct?

5 A Correct.

6 Q You had given her a request to monitor him in the medical  
7 department.

8 A Yes.

9 Q And to see how he was doing.

10 A Correct.

11 Q Is this the typical way then that the third shift would  
12 provide information to you for your thought process without  
13 giving you another phone call in the middle of the night?

14 A Correct. Because the patient was stable, so they wouldn't  
15 need to call me back. They can either put it in the task or  
16 they can put a chart note, which you've all seen chart notes  
17 before, and then task us to review the chart note.

18 Q So what information was provided to you?

19 A The first part is basically what was contained in the  
20 verbal order.

21 Q And we have gone over that.

22 A Right. And then where we put them, which is why I wanted  
23 to explain that medical department to you. He is placed in the  
24 dental chair. The patient was able to sip water, keep it down.  
25 He fell asleep for approximately two hours, gave a pretzel, and

1 he was able to hold them down also. His vital signs were  
2 rechecked. They were stable. And he voided, which means  
3 urinate.

4 Q And he, again, was given food, solid food, right?

5 A Uh-huh.

6 Q Didn't cause him to throw up.

7 A Right.

8 Q Same with the water.

9 A Right.

10 Q Okay. Now, Paul, under updated notes. Do you see that  
11 there to the right?

12 A Yes.

13 Q Is that something you entered?

14 A That's something I entered, yes.

15 Q Explain for the jury what you entered there and what your  
16 thought process was.

17 A So in our computer system the nurse created -- can I stand?

18 Q Your Honor, is that acceptable?

19 THE COURT: Certainly.

20 BY MR. NINOSKY:

21 Q Certainly. And if you have to get to the other side, go  
22 ahead, Paula. You can leave the stand just to get the point if  
23 you need to.

24 A So in our computer system this is what was shown to me as I  
25 was looking at this screen on the computer, okay. And it was

1 created by Allison Young. So then I, in turn, have to do  
2 something with that task, so I complete that task by entering  
3 this component over here and then it reflects what time I  
4 completed that. So --

5 Q So at 11:36 what did you complete? What did you do?

6 A I reviewed what Allison had put in her task to me and then  
7 I had scheduled him to be seen on Monday because that note  
8 reflects that he is stable. And I was going to await the labs  
9 that I had -- that were just drawn that morning at 4:00 in the  
10 morning and a nursing reassessment because a nurse had also been  
11 tasked on Friday during the day to reassess the patient to see  
12 for change in his status kind of like to re-triage him. Is he  
13 still okay or is he not okay?

14 Q And, Paula, was he assessed by nursing on the first shift?

15 A Upon chart review, yes.

16 Q Yeah. And I think it's going to be page 73, please, at the  
17 top. There you go. Do you see the entry of Nurse Becker?

18 A Yes.

19 Q What information is contained there?

20 A The note reflects the patient assessed during the 0600 and  
21 1200 med pass. Patient states feeling weak and having no  
22 appetite, but reported no emesis -- which is vomiting -- since  
23 early a.m. The vital signs were stable. That's what the DSS  
24 means. Afebrile, no temperature. Patient reported eating  
25 nothing for breakfast and a small amount for lunch.

1 Q Let's talk about the vomiting, the emesis. There was  
2 documented vomiting one time in the medical department, correct?

3 A Right.

4 Q And then there was no complaints of vomiting through this  
5 note, correct?

6 A Correct.

7 Q Okay. The --

8 A The patient tolerated the water and the pretzel, kind of  
9 went back to the unit. Like I stated before, may have slept  
10 through breakfast for all we know.

11 MS. RAMEAU: Objection, speculation.

12 THE COURT: I'll sustain the objection.

13 MS. RAMEAU: Move to strike, Your Honor.

14 THE COURT: What am I striking? That he may have  
15 slept?

16 MS. RAMEAU: Yes.

17 THE COURT: Ladies and gentlemen of the jury, the he  
18 may have slept was somewhat speculative on the part of the  
19 witness, so you will disregard that statement. Thank you.

20 Mr. Ninosky, you may continue.

21 BY MR. NINOSKY:

22 Q But we do see that he ate lunch, right?

23 A Right. He ate a small amount for lunch.

24 Q So irrespective of the reason why he didn't eat breakfast,  
25 he did eat lunch.

1 A Correct.

2 Q Generally from your perspective with that information,  
3 Paula, what would you be thinking about as far as Mr. Rodriguez'  
4 condition?

5 A He's stable.

6 Q Now --

7 A And the nurse who was with him in the morning med pass, was  
8 with him at the lunchtime med pass, didn't feel like she needed  
9 a provider to see the patient.

10 MS. RAMEAU: Objection. The witness is testifying as  
11 to the state of mind of a witness who is not on the stand. It's  
12 not proper.

13 THE COURT: Counsel, please approach.

14 (Sidebar)

15 THE COURT: (Inaudible).

16 MR. NINOSKY: Yeah.

17 THE COURT: So she (inaudible).

18 MS. RAMEAU: But that wasn't the testimony. The  
19 testimony was that nurse felt like she didn't need to contact  
20 me. That is what the witness said. That's why I objected. She  
21 can say that she didn't hear from anybody else, but she's not up  
22 there to testify as to what other people are thinking and  
23 feeling.

24 THE COURT: I'll sustain the objection.

25 MS. RAMEAU: Thank you.

1 THE COURT: (Inaudible).

2 MR. NINOSKY: Sure.

3 (End of Sidebar)

4 BY MR. NINOSKY:

5 Q Paula, are the nurses trained to bring to provider's  
6 attentions abnormalities?

7 A Yes.

8 Q Concerns that they think need to be looked upon?

9 A Yes.

10 Q Did you receive any information during the afternoon about  
11 any problems or any abnormalities or problems of Mr. Rodriguez?

12 A No.

13 Q Does that note reflect any problems or abnormalities?

14 A No.

15 Q Now, later on that evening you did receive another phone  
16 call, correct?

17 A Yes.

18 Q And that was from Nurse Roberts.

19 A Yes.

20 Q And do you remember what information you were provided by  
21 Nurse Roberts when she called?

22 A That the pain is now in the lower abdomen and into the  
23 testicle.

24 Q Now, you were asked questions about whether you were told  
25 he asked to go to the hospital or not, okay. Would whether

1 there's a request by the inmate matter when you're trying to  
2 decide whether it's appropriate to send them out or not?

3 MS. RAMEAU: Objection. Can we approach?

4 THE COURT: If you would like to, certainly. Counsel,  
5 please approach.

6 (Sidebar)

7 MR. NINOSKY: The question (inaudible).

8 MS. RAMEAU: Okay. The way the question sounds to me,  
9 Mr. Ninosky said something to the effect of when assessing  
10 whether someone -- whether to send someone to the hospital, is  
11 it for you to -- I was somewhat confused by the question,  
12 frankly. But my understanding was something to the effect of  
13 when you're trying to determine whether to send someone to the  
14 hospital do you try and understand what's in the person's mind  
15 in order to determine to send that person to the hospital, which  
16 I don't know that that's a proper question.

17 THE COURT: Well, why don't we have Mr. Ninosky reask  
18 the question and see.

19 MS. RAMEAU: Okay. Okay.

20 (End of Sidebar)

21 THE COURT: Counsel, you may proceed.

22 BY MR. NINOSKY:

23 Q You were asked on direct examination whether you were told  
24 that Mr. Rodriguez wanted to go to the hospital. Remember that?

25 A Yes.

1 Q And you said you don't remember.

2 A Correct.

3 Q Okay. Would it matter anyway as far as you making your  
4 independent judgment as to whether somebody should be sent out  
5 to the hospital or not?

6 A No.

7 Q Why?

8 A You need to look at the whole picture of the patient, what  
9 their vital signs are, what the patient's complaints are related  
10 to their physical symptoms, not just, "I'd like to go to the  
11 hospital," what the nurse finds on her examination. And based  
12 on all of that together you're going to decide whether the  
13 patient -- your treatment. You're going to decide your  
14 treatment plan and does that involve sending the patient to the  
15 hospital.

16 Q You received a phone call. You can take that one down.  
17 Thanks. And if you want to put up 205 for me. Well, we're  
18 working on -- while she's working on that, I'm going to approach  
19 and we'll start together. It indicates that you got a phone  
20 call from -- it says (inaudible), but that's Suzy Roberts,  
21 right?

22 A Correct.

23 Q Okay. What's the first thing that's documented there as  
24 far as what she's putting into the chart?

25 A Reviewed sick call form regarding abdominal pain.



1 Q Okay. So that would be that abdominal sick call form that  
2 we've talked about before.

3 A Yes.

4 Q Okay. Now I'm not going to put that back up there again  
5 because I think the significant portion of it is were you  
6 provided information about the location of the pain.

7 A Yes.

8 Q What were you provided?

9 A Pain in both lower quadrants, the right lower quadrant and  
10 left lower quadrant and into the testicle.

11 Q Now, Paula, is that something that you would expect as a  
12 typical presentation of an appendicitis?

13 A Absolutely not.

14 Q I mean, what is your thought process now, now that we have  
15 this diffuse tenderness in both quadrants and into his  
16 testicles?

17 A Maybe there's something going on related to his urinary  
18 system. Maybe it's a kidney stone. Maybe it's gastroenteritis.  
19 Maybe it's constipation. I mean, like I said, my differential  
20 in my head, I could go on and on.

21 Q So with that information that you were provided, what did  
22 you do?

23 A Well, Suzy had done the urine. We reviewed the urine.

24 Q Anything significant about the urine?

25 A No. There's nothing significant about the urine. Yes,

1 there is protein in the urine and, yes, there is trace ketones,  
2 but it's clinically not significant. It's nothing that is a  
3 problem. She told me Chad did a testicular exam. There was  
4 nothing wrong with his testicles. When you have a testicle  
5 complaint in a male, the most important thing you worry about is  
6 torsion. It's one of the common complaints in your differential  
7 diagnosis, so you want to make sure that the patient's testicles  
8 are okay. So then I decided, okay, patient is stable, but  
9 they're complaining of abdominal pain, so I'm going to move him  
10 to the medical housing unit.

11 Now, the medical housing unit, it's not a hospital. It's  
12 not an infirmary. The best way for me to describe it to you is  
13 it's a cell just like any other cell in a jail, but there is one  
14 door that separates that unit from the nurses. So that's the  
15 importance of moving the patient to that unit. There's also  
16 custody staff that is available on that unit.

17 Q Two things before we get to that, Paula. Was there any  
18 notation of a complaint of vomiting?

19 A No.

20 Q Was there any notation of a fever?

21 A No.

22 Q In fact, we know that all vital signs were within normal  
23 limits, including his temperature, correct?

24 A Yes.

25 Q So the vital signs at this point were within normal limits,

1 were they not?

2 A Yes.

3 Q And you said that an officer is available in the unit and I  
4 think you at least given testimony that they go by each medical  
5 staff every 15 minutes, right?

6 A Correct.

7 Q Is that officer available to the inmate if the inmate had a  
8 complaint?

9 A I --

10 MS. RAMEAU: Objection. Calls for speculation.

11 MR. NINOSKY: Well, Your Honor --

12 MS. RAMEAU: Can we approach?

13 THE COURT: Certainly.

14 (Sidebar)

15 THE COURT: (Inaudible).

16 MS. RAMEAU: It's rhetorical. Maybe he can save it  
17 for argument because, I mean, the way I heard it, Your Honor, it  
18 sounds like he's asking the witness to testify about something  
19 the witness already testified she knows nothing about, which is  
20 the 15 minute checks.

21 THE COURT: (Inaudible).

22 MR. NINOSKY: She doesn't know as far as the security,  
23 what their training is for security. The purpose of the  
24 question, that there's an available officer outside that guy's  
25 window on a regular basis. And if Rodriguez had (inaudible) he

1 could go to an officer just as we know he did that earlier when  
2 he was on the block because that's how this whole thing started.  
3 That wasn't (inaudible).

4 THE COURT: I'm going to let her answer.

5 MS. RAMEAU: Okay.

6 (End of Sidebar)

7 BY MR. NINOSKY:

8 Q I'm going to step back just for a hair here. We talked  
9 about the sick call process where you could do the slips, right?

10 A Yes.

11 Q We also talked about that an inmate could go to an officer  
12 to seek help, right?

13 A Right.

14 Q And we know from the prior testimony Mr. Rodriguez did  
15 that, went to an officer because that's how Suzy was called to  
16 the block to do an assessment on the 16h. We know that.

17 A Yes.

18 Q Okay. So, again, there's an officer that goes by the  
19 medical unit cell every 15 minutes or so, right?

20 A Yes.

21 Q Would that officer be available for an inmate to seek some  
22 sort of assistance?

23 A Yes, because there's -- my understand, there's not that  
24 much availability of officer patient interaction, or at that  
25 point, it would be officer inmate interaction, in the general

1 housing unit.

2 Q And there's an officer that staffs the medical unit at all  
3 times?

4 A There are actually three officers that staff the medical  
5 unit, a female and male officer, and then an officer that does  
6 the checks.

7 Q Now you indicated that you wanted him moved to the medical  
8 unit, correct?

9 A Correct.

10 Q And that's for closer observation.

11 A Yes.

12 Q Was there something else that you also ordered?

13 A Well, I denied him exercise and I advised the nurse not to  
14 change his cell because if this was an infectious process that  
15 was going on, we want to limit the contact that the patient has  
16 with other patients so that they don't also get sick.

17 Q Did you do anything else as far as orders?

18 A Vital signs twice a day for three days, so that would  
19 increase the patient's encounters with the nursing staff. Not  
20 just to have an encounter with the nurse when the medical was  
21 passed, but then also the patient would have their vital signs  
22 taken by nursing at additional times during the day, two  
23 additional times during the day.

24 Q Paula, as part of your process for this increased  
25 monitoring was it based upon your experience, and frankly what

1 we've seen in his case, and if there's abnormal findings they're  
2 reported to a provider?

3 A Yes. So the patient with twice a day vital signs and a med  
4 pass twice a day, the patient is actually being seen every shift  
5 by some medical personnel, by some nurse, some licensed nurse.

6 Q So it could be -- so upwards of four times a day there  
7 would be a nurse that would have some interaction with Mr.  
8 Rodriguez.

9 A There would be four times a day that the patient through  
10 the weekend would have interaction with a nurse.

11 Q And from your experience, if there was something abnormal  
12 or concern of the nurses of any of those four times a day, do  
13 they contact the provider?

14 A Yes.

15 Q So as part of your thought process for your plan on Friday  
16 evening, you knew that there was going to be eyes and ears on  
17 Mr. Rodriguez, correct?

18 A Through the weekend, yes.

19 Q For somebody on the street, if they call their doctor's  
20 office with a complaint of abdominal pain on a Friday and  
21 they're told to come in on Monday for an appointment, does the  
22 average person have a nurse doing vital signs twice a day on a  
23 Saturday and a Sunday in between?

24 A No.

25 Q Were the -- from your review of the chart, Paula, were the

1 vital signs taken?

2 A Yes.

3 Q And we're getting toward close to lunch. I won't go  
4 through all of them, but were there --

5 A There were no abnormal vital signs that would have been  
6 needed to be called. And also at the point when the nurse is  
7 taking the vital signs, she's physically touching the patient to  
8 check the pulse, whether it's count the pulse with your fingers  
9 or put the pulse ox machine on the finger. She's putting the  
10 blood pressure cuff on. So the patient also has the opportunity  
11 to say, "Hey, I don't feel good. There's something wrong. I'm  
12 vomiting. There's the vomit in my toilet."

13 Because when those vital signs are being taken, most of the  
14 time the nurse is going into the cell, into where they're living  
15 to see is there food still in the Styrofoam food tray. Is there  
16 vomit in the toilet or on the floor. Because -- and I'm saying  
17 inmates right now because inmates in the cell don't have the  
18 ability to clean up their vomit if they vomit on the floor or if  
19 they urinate on the floor, if they spill their food. They don't  
20 have paper towels. They just have one towel, to my knowledge.

21 Q You never received any phone calls over the weekend, fair?

22 A Correct.

23 Q So last information that you would have had on Friday was  
24 that vital signs were stable.

25 A Correct.

1 Q And you were seeking increased monitoring.

2 A Increased monitoring, allow the Naproxen time to come out  
3 of the system, see how he responds to the new medication, await  
4 the lab work and see him on Monday morning.

5 Q Okay. Now you did see him on Monday, April 20th, correct?

6 A Yes.

7 Q And we're going to pull up your note here a little bit, all  
8 right?

9 A Okay.

10 Q Now you already talked about the subjective --

11 A Correct.

12 Q -- as far as that's what he's telling, you correct?

13 A Right.

14 Q And it indicates that vomiting, I think ten minutes ago,  
15 correct?

16 A Right.

17 Q The last reported vomiting in the chart would have been  
18 with Allison Young in the medical department either late 16th,  
19 early 17th, correct?

20 A Right. On night shift, Thursday night into Friday morning.

21 Q And the information that we had in between was that he was  
22 able to tolerate solid food and water.

23 A Correct, and eat lunch.

24 Q And eat lunch, okay. Now, but he did tell you that he  
25 vomited.



1 A Correct.

2 Q And he also then told you that he had one episode of  
3 diarrhea, correct?

4 A Correct.

5 Q And that was the day before.

6 A Correct.

7 Q All right. Now, Paula, under the objective portion --

8 A The objective portion of any note is what you're physically  
9 seeing with the patient. So my first concern in a patient that  
10 has nausea, vomiting, diarrhea is what does their hydration look  
11 like. And we do that by looking at the skin. So his skin was  
12 warm and dry. It was intact. Turgor is like when you pull the  
13 skin like this, it's a sign of dehydration. If it tents, if it  
14 stays up like this when you remove your fingers, it's  
15 dehydration. So he had good turgor. We call this good turgor  
16 when it does what my turgor does.

17 Your capillary refill. Does your nail bed blanch? If  
18 you're dehydrated, your nail bed is not going to blanch. So  
19 and the two seconds is normal nail bed blanching. I listened to  
20 his heart and his lungs. Those were normal. And then listened  
21 to his abdomen because he had abdominal complaints. So I found  
22 it to be soft and distended. He had no bowel sounds in all four  
23 quads and he had diffuse lower abdominal tenderness with no  
24 rebound.

25 Q Can I ask you a follow up question then? Is there anything

1 else about the objective there?

2 A No.

3 Q You had gone through about hydration, correct?

4 A Yes.

5 Q And looking for signs of dehydration.

6 A Correct.

7 Q What is one of the main causes of dehydration?

8 A Vomiting.

9 Q Would you expect, from your experience, a patient that had  
10 ongoing intractable vomiting, I think I heard, to have this type  
11 of presentation?

12 A No.

13 Q So there's nothing objectively to show any sort of  
14 dehydration?

15 A There was nothing on my objective exam. The vital signs  
16 were completely normal and the skin assessment was normal for  
17 dehydration.

18 Q Now, you said the bowel sounds were absent.

19 A Right.

20 Q That's different, right?

21 A That's correct.

22 Q Okay. And what can that be a sign or symptom of?

23 A Well, usually when you have absent bowel sounds, and even  
24 if I refer back to the form for the nurses, if they need to  
25 complete -- I did not point this out, but if your nurse has

1 absent bowel sounds, she also must call that in addition to  
2 their rebound and rigid guard. Absent bowel sounds, there's  
3 something going on in the belly that's not good and that's  
4 something that needs to be further explored.

5 Q And that would --

6 A Because things aren't moving through the belly. Everything  
7 is at a standstill.

8 Q Was also the description of pain different than what we've  
9 seen to this point?

10 A It was through the lower abdomen. He didn't mention  
11 testicular pain to me that day, but he had lower abdominal pain  
12 on Friday.

13 Q How about the severity? Is that description of the  
14 severity of pain different than what we've seen previously?

15 A Well, I know how I do my pain scale, so he rated it as a  
16 10, which told me that was the worst pain he's ever experienced  
17 in his life.

18 Q What was your plan? Well, first, you already told us your  
19 thought process was thinking about a bowel obstruction.

20 A A bowel obstruction.

21 Q Okay. So what did you do then?

22 A I sent the patient out via 911 to Reading Hospital.

23 Q Did you ever think this man had an appendicitis?

24 A No.

25 Q Why not?

1 A He didn't present with an appendicitis. When I left work  
2 on Friday, I never heard from the nurses again through the  
3 weekend. I saw him Monday when it was brought to my attention  
4 that he was having complaints of severe pain in the medical  
5 unit.

6 Q And you didn't see him on the 17th. Why not?

7 A He was completely stable on the 17th. He had been in the  
8 medical department early that morning and kind of like the  
9 middle of the night. He slept in the dental chair with blankets  
10 on him, took a sip of water, ate a pretzel. His vital signs  
11 stayed stable. I knew nursing was going to check on him that  
12 day and the standard is if the nurse checks on a patient and  
13 there's an abnormality, they bring it to our attention and  
14 nothing was brought to my attention.

15 Q Your Honor, those are all the questions that I have for the  
16 witness. Thank you.

17 THE COURT: Thank you, Mr. Ninosky.

18 Attorney Rameau, you may redirect the witness.

19 MS. RAMEAU: Yes, Your Honor. Thank you.

20 THE COURT: Certainly.

21 REDIRECT EXAMINATION

22 BY MS. RAMEAU:

23 Q Now, you testified that you chose to provide care at a  
24 correctional facility, is that right? Was that your testimony?

25 A I don't understand your question.

1 Q Well, didn't you say that you were working elsewhere and  
2 that you made a decision to go and work at a correctional  
3 facility, is that right?

4 A Yes. Yes.

5 Q And because in part you have patients, you had patients  
6 that you knew well, right?

7 A Correct.

8 Q Who became incarcerated, right?

9 A Yes.

10 Q And I believe you said that it was sad, is that right?

11 A Correct.

12 Q You have these individuals you knew before, right, that you  
13 consider friends, is that right? Patients, certainly?

14 A I don't consider any of my patients my friends. They're  
15 patients.

16 Q So these are patients you had before, right?

17 A Yes.

18 Q People that you knew before, right?

19 A Correct.

20 Q Now, Rafael --

21 A Well, on a patient level, yes.

22 Q But Rafael Rodriguez is not a patient that you knew before,  
23 right?

24 A Correct.

25 Q He's not someone that you knew before you started working

1 at the Berks County Jail, right?

2 A Correct.

3 Q So Rafael Rodriguez is a stranger to you, correct?

4 A Correct.

5 Q Okay. In fact, you testified previously that you had no  
6 idea who he was outside of his medical chart, isn't that right?

7 A Correct.

8 Q So this discussion that you had with Mr. Ninosky on the  
9 record before the members of the jury about the patients you had  
10 previously and how sad it was, that has no bearing on your  
11 relationship with Rafael Rodriguez, correct?

12 MR. NINOSKY: Objection. Argumentative.

13 THE COURT: It's overruled.

14 BY MS. RAMEAU:

15 Q Is that right?

16 A Correct.

17 Q Now, you had a discussion with Mr. Ninosky about abdominal  
18 pain being common in the prison system, correct?

19 A Correct.

20 Q And you talked about that for a while, is that right?

21 A Yes.

22 Q Now, appendicitis happens to be a condition that is quite  
23 common among young men within Rafael Rodriguez' age group as  
24 well, isn't that right?

25 A Yes.

1 Q But you didn't consider that, did you? Withdrawn.  
2 Withdrawn. Now, you remember talking to Mr. Ninosky about Dr.  
3 Brown's testimony.

4 A Correct. Yes.

5 Q Now Dr. Brown testified that while it may at times be  
6 difficult to diagnose appendicitis, that once you get a patient  
7 to a hospital it's really just a matter of putting a patient in  
8 the CT scan, isn't that right?

9 A Yes.

10 Q Now, Dr. Brown also testified that you failed at what you  
11 did in this case, that you breached the standard of care that is  
12 applicable in the community at large, when you failed to send  
13 Rafael Rodriguez to the hospital earlier. You heard his  
14 testimony, right? Sooner.

15 A Yes. Yes.

16 Q Now, you had a discussion with Mr. Ninosky about a series  
17 of documents. Just a moment, Your Honor.

18 THE COURT: Certainly, Counselor.

19 BY MS. RAMEAU:

20 Q You had a discussion with Mr. Ninosky about the forms that  
21 are used to assess abdominal pain, correct?

22 A Yes.

23 Q And I believe you testified that the forms are intended to  
24 elicit the proper information so that you can, you know, get the  
25 diagnosis and do your job properly. Was that the essence of

1 your testimony?

2 A They're intended for the nurse to elicit information to  
3 convey to the provider.

4 Q Understood. Now let me -- I'd like to show you PMC61, the  
5 same form that you were discussing with Mr. Ninosky. Your  
6 Honor?

7 THE COURT: Just a moment.

8 BY MS. RAMEAU:

9 Q Okay. Now, take a look at this form. Now, the form here  
10 says rebound tenderness, correct?

11 A Yes.

12 Q So, now you understand now that you -- a patient may be  
13 experiencing a serious medical condition, right, without rebound  
14 tenderness. You now understand that, right?

15 A Yes.

16 Q So it's not the form, right. It's the person doing the  
17 assessment, the information, the way its elicited, and what you  
18 do with it. Is that right? Is that a fair characterization of  
19 the discussion?

20 A Yes.

21 Q In other words, you can't blame it on the form, right?

22 A Correct.

23 Q Because you're the provider, correct?

24 A Yes.

25 Q You're the one with the extensive knowledge and experience,



1 right?

2 A Yes.

3 Q You're the one who can go into the community at large and  
4 treat patients, right?

5 A Yes.

6 Q Now you had a discussion with Mr. Ninosky about the  
7 Naproxen. You remember that?

8 A Yes.

9 Q And you indicated that it causes gastritis, right?

10 A Yes.

11 Q And that's a fancy word, a medical word for acid reflux and  
12 heartburn, correct?

13 A No. It's irritation of the stomach lining.

14 Q Okay. So it's an irritation of the stomach lining, right.  
15 Now you wouldn't feel that kind of thing in the area of your  
16 belly button, would you?

17 A You could.

18 Q You could?

19 A Yes.

20 Q I see. So your understanding is that an inflammation of  
21 the abdomen, right, that is due to Naproxen can be felt in the  
22 area of the belly button, correct?

23 A Well, gastritis is not an inflammation of the abdomen.  
24 It's an inflammation of the stomach. The stomach is your organ  
25 inside your abdomen.

1 Q So your understanding is that an inflammatory process of  
2 the abdomen, is that right?

3 A Of the stomach.

4 Q Due to -- of the stomach due to the use of Naproxen can be  
5 felt in the area of the belly button, is that right?

6 A Yes.

7 Q Is it also your understanding that an inflammation of the  
8 abdomen, or is it the stomach? Which term would you prefer me  
9 to use? Is it the stomach or the abdomen?

10 A The stomach.

11 Q Okay. So is it also your understanding that an  
12 inflammation -- that an inflammatory process of the stomach,  
13 right, due to use of Naproxen can also be felt in the lower  
14 quadrants? Is that your understanding?

15 A No.

16 Q No. You don't think so, right?

17 A No.

18 Q That's inconsistent, correct?

19 A Yes.

20 Q So and you gave him -- when you thought he had gastritis,  
21 you gave him a gastric cocktail, right?

22 A Yes.

23 Q Things like Pepcid, right?

24 A Yes.

25 Q Maalox, right?

1 A Yes.

2 Q A cocktail of drugs that are supposed to address gastritis,  
3 correct?

4 A Over time, not in one dose.

5 Q Right. I see. But he didn't get any better, correct?  
6 Withdrawn. The pain by April 17th was located in the lower  
7 quadrants, correct?

8 A Yes.

9 Q So at that point you had some idea that maybe it's not  
10 gastritis, correct?

11 A Yes.

12 Q Now you testified time and time again that he was stable,  
13 right?

14 A Yes.

15 Q That his vitals were just fine, correct? That was your  
16 testimony, right?

17 A I didn't just determine that he was stable based on vital  
18 signs.

19 Q Well, your testimony was that the vitals were an indication  
20 of how he was doing. Am I right?

21 A He was in -- he ate and drank. He slept overnight.

22 Q I see. But I want to focus --

23 A He had no further reports of vomiting.

24 Q -- your attention and your -- okay. I want to focus your  
25 attention and your testimony right now on the vital signs,

1 right, and the significance of the vital signs. Now, you do  
2 rely on the vital signs in your assessment, correct?

3 A Yes.

4 Q Now you heard Dr. Brown's testimony about vital signs,  
5 didn't you?

6 A Yes.

7 Q And you heard Dr. Brown say that you can't rely on vital  
8 signs because they're not a good indicator of how a patient is  
9 doing unless they are abnormal, correct?

10 A Yes.

11 Q You heard that testimony, right? But you disagree with Dr.  
12 Brown, correct?

13 A I'm not disagreeing with Dr. Brown.

14 Q Do you think you have more knowledge and experience in the  
15 field of medicine than Dr. Brown?

16 A I'm not --

17 MR. NINOSKY: Objection. It's argumentative.

18 MS. RAMEAU: Your Honor, I'll move on.

19 THE COURT: Very well.

20 BY MS. RAMEAU:

21 Q Okay. Now you testified that Rafael Rodriguez' vitals were  
22 normal on April 18th, correct?

23 A Yes.

24 Q And April 19th, correct?

25 A Yes.

1 Q You heard Dr. Brown testify about the extent of the disease  
2 process inside Rafael Rodriguez' abdomen, right?

3 A Yes.

4 Q You heard Dr. Brown testify that in his numerous years of  
5 experience having done hundreds of appendectomy that Rafael  
6 Rodriguez' case was one of the worst he had ever seen. You  
7 heard that, right?

8 A It was in the top ten.

9 Q It was in the top ten out of hundreds. That's right.

10 A Yes.

11 Q Now, do you really believe that given the state of Rafael  
12 Rodriguez' disease process, that he was perfectly fine on the  
13 18th and the 19th or are you just saying that in order to avoid  
14 responsibility for failing to properly send my client to the  
15 hospital where he could get proper care?

16 MR. NINOSKY: Objection.

17 THE COURT: The objection is sustained.

18 BY MS. RAMEAU:

19 Q Now, you had a discussion with Mr. Ninosky about --  
20 withdrawn. Just a moment, Your Honor.

21 THE COURT: Certainly, Counselor.

22 BY MS. RAMEAU:

23 Q Ms. McGowan, you had a discussion with Mr. Ninosky about  
24 the word stat. Do you remember that?

25 A Yes.

1 Q About stat in a hospital, right, relative to stat in the  
2 correctional setting, right?

3 A Yes.

4 Q You're not suggesting to the members of the jury that there  
5 is a lesser standard of care that applies to inmates at a  
6 correctional facility, are you?

7 A Absolutely not.

8 Q Thank you. Now you also had a discussion with Mr. Ninosky  
9 about some blood test, correct?

10 A Correct.

11 Q Now you're not a hematologist, right?

12 A Absolutely not.

13 Q You don't know how to read these things with specificity,  
14 do you?

15 A Not with specificity.

16 Q Now take a look at the document that's on the screen,  
17 PMC94. Do you see up here where it says clinical abnormality  
18 summary?

19 A Yes.

20 Q And it says polys (phonetic) 81.7.

21 A Yes.

22 Q That's 81.7 percent, correct?

23 A Yes.

24 Q And it also says --

25 MR. NINOSKY: I don't think there was an answer to the

1 question, at least that I heard. Maybe I just missed it.

2 BY MS. RAMEAU:

3 Q I heard the witness say yes. Was that a yes, Ms. McGowan?

4 A Well, you have to look at the range. I'm not sure if it's  
5 a percentage or --

6 Q Okay. I'll show you the range shortly, okay. It also says  
7 lance, right? You see that?

8 A Yes.

9 Q It says 7.1 percent.

10 A I'm not sure if it's a percentage, but it says 7.1.

11 Q I see. So let's look at the range, okay.

12 A Okay.

13 Q Okay. Now polys are a type of white blood cells, correct?

14 A Correct.

15 Q They're like the police, right, in the neighborhood. If  
16 something is out of whack the polys will go out and regulate,  
17 correct?

18 A Correct.

19 Q And in the case of polys, the polys regulate bacterial  
20 infections, is that right?

21 A In addition to the white blood cell count.

22 Q Do you know what the polys regulate, Ms. McGowan?

23 A They're a component of the white blood cell count.

24 Q And they regulate bacterial infection, correct?

25 A Yes.

1 Q Now take a look at the value, right, according to this  
2 particular lab because different labs have different values,  
3 correct?

4 A Correct.

5 Q Now, according to this lab, right, the normal range for  
6 polys is within 36 and 78 percent, is that right?

7 A Yes.

8 Q Now if you do the average, right, that's 57 percent,  
9 correct?

10 A Correct.

11 Q Now Rafael Rodriguez' polys were elevated at a level of  
12 81.7 percent, correct?

13 A Yes.

14 Q Now let's take a look at the second page. Do you see where  
15 it says (inaudible)?

16 A Yes.

17 Q His (inaudible) were at a level of 7.7 percent, correct?

18 A Yes.

19 Q And the (inaudible) regulated viral infections, correct?

20 A Yes.

21 Q And that's low, right?

22 A Yes.

23 Q That's what you call a shift, correct?

24 A Yes.

25 Q Your Honor, can we approach?



1 THE COURT: Certainly, Counselor.

2 (Sidebar)

3 MS. RAMEAU: (Inaudible) if that's okay with the  
4 Court.

5 THE COURT: Well, I'd rather finish this witness  
6 (inaudible).

7 MS. RAMEAU: I'm almost done. That's fine. I wanted  
8 to take a bathroom break, but I can wait.

9 THE COURT: Let's finish this witness.

10 MS. RAMEAU: Okay. Great.

11 (End of Sidebar)

12 BY MS. RAMEAU:

13 Q All right. So I want to talk to you about the discussions  
14 about the pretzels and the water, okay.

15 A Okay.

16 Q All right. So early in the morning, right, about 3:00 in  
17 the morning or so he had water and pretzels, is that right?

18 A Yes.

19 Q So, but later at night you heard information that he was  
20 still vomiting. I just want to be clear, right.

21 A Yes.

22 Q Later the night of the 17th, correct? This was hours after  
23 he had had the water and the pretzels, correct?

24 A Correct.

25 Q That he even vomited in the medical department, correct?

1 A No, that was before he had the water and the pretzels.

2 Q I'm sorry.

3 A He vomited in the medical department before he received the  
4 water and the pretzels.

5 Q Well, let me show you a document to see if it refreshes  
6 your recollection about when exactly he had the water and the  
7 pretzels. All right. All right. Ms. McGowan, take a look at  
8 this document, PCM184, the same document you discussed with Mr.  
9 Ninosky, okay.

10 A Yes.

11 Q Related to Rafael Rodriguez having the water and the  
12 pretzels.

13 A Yes.

14 Q Now it says here that the document was created by Allison  
15 Young, correct?

16 A Yes.

17 Q On April 17, 2015, correct?

18 A Yes.

19 Q At 2:12 in the morning, right?

20 A Yes.

21 Q So let's talk about when he vomited in medical. Okay. All  
22 right. So we already discussed the fact that -- okay. So, now,  
23 we already discussed the fact that Allison Young noted the fact  
24 that he had the water and the pretzel in the chart at 2:00 in  
25 the morning, correct? Was it 2:30?

1 A It was 2:12.

2 Q It was 2:12. Thank you.

3 A You're welcome.

4 Q So now it's just over an hour later at 3:37 in the same  
5 day.

6 MR. NINOSKY: May we approach, Your Honor?

7 THE COURT: Certainly. Counsel, please approach.

8 (Sidebar)

9 MR. NINOSKY: I'm anticipating that there's going to  
10 be a mischaracterization of testimony. Allison Young testified  
11 that she entered the chart notes at 3:37. The care that was  
12 rendered was prior to that. There was a whole line of questions  
13 on cross-examination of Allison Young to try to nail down when  
14 that was, but at no point did she ever say that the treatment  
15 was at 3:37. So she's going to try to mischaracterize Ms.  
16 Young's testimony to say that now he was vomiting after 2:12,  
17 which is when the chart note, the task was entered by Allison  
18 Young. It's simply not accurate and consistent with testimony  
19 that's already in the record.

20 MS. RAMEAU: I don't know what he's saying here. I'm  
21 just -- I'm trying to figure this out myself.

22 THE COURT: Then he is suggesting that the witness is  
23 (inaudible).

24 MS. RAMEAU: Okay. Okay.

25 MR. NINOSKY: That's correct. And that is borne out

1 by the testimony.

2 THE COURT: (Inaudible).

3 MS. RAMEAU: All right.

4 MR. NINOSKY: Correct. And that's what Allison Young  
5 testified to already.

6 MS. RAMEAU: So she entered the note that -- I'm  
7 sorry. She entered a note at 2:15 or 2:13 that he had the  
8 pretzels, right. And then -- so, I see, okay.

9 MR. NINOSKY: She did two chart notes around 3:37-ish.  
10 I forget when the second one is. Documenting all of the  
11 encounters. All of that happened beforehand. The task was --

12 MS. RAMEAU: Is that you saying that or is that what  
13 the evidence has shown?

14 MR. NINOSKY: Your --

15 MS. RAMEAU: Because if you remember correctly when we  
16 were doing Allison Young --

17 THE COURT: It's so close to lunch. Let's get going.

18 MS. RAMEAU: Okay.

19 MR. NINOSKY: Yeah. And that's why I don't want to go  
20 down the wrong path with her mischaracterizing the testimony,  
21 which is where this is going which is the purpose of my -- I'm  
22 anticipating and I'm raising an objection if there's a  
23 mischaracterization as to what we already have testimony on.

24 THE COURT: Understood. Thank you.

25 MS. RAMEAU: So what's the ruling, Your Honor?

1 THE COURT: You can ask (inaudible).

2 MS. RAMEAU: Oh, is that what you're doing? I'm about  
3 to mischaracterize.

4 MR. NINOSKY: Well, if she's going to say to this  
5 witness that 3:37 is --

6 MS. RAMEAU: I'll move on.

7 (End of Sidebar)

8 THE COURT: Ms. Rameau, you may continue.

9 BY MS. RAMEAU:

10 Q Yes, Your Honor. So if I understand your testimony  
11 correctly, right, this note here, right, that's dated -- it's  
12 time stamped rather 3:37 indicating that Rafael Rodriguez  
13 vomited on K unit, which would be an hour and 27 something  
14 minutes after the note we just discussed. That's the time stamp  
15 --

16 MR. NINOSKY: Objection, Your Honor. This is exactly  
17 what we had --

18 MS. RAMEAU: I'm discussing the timestamp.

19 MR. NINOSKY: This is exactly what we had a sidebar  
20 about.

21 THE COURT: I believe the witness may be able to  
22 resolve the issue.

23 MS. RAMEAU: Clarify, right.

24 THE COURT: I'll overrule the objection.

25 BY MS. RAMEAU:

1 Q So you testified earlier that he had the pretzels at 2:13,  
2 correct?

3 A No, I did not testify that. I testified earlier that the  
4 task was generated by Allison Young at 2:12.

5 Q Understood. Okay. So this entry here that is timestamped  
6 3:37, right, indicating that Rafael Rodriguez was describing  
7 brown and red vomit, even though it's later in time, it's  
8 actually prior in occurrence, is that right?

9 A Yes.

10 Q Okay.

11 A Because my note reflects -- the chart note reflects that it  
12 was prior.

13 Q I understand. I just wanted to clarify that with you.  
14 It's okay. I'll move on now. So he's brought over to medical,  
15 to the medical department, and he's assessed, right, early in  
16 the morning on April 17th. Now let's just fast forward on April  
17 17th to let's say 6:00 in the morning, correct?

18 A Correct.

19 Q Okay. So you talked about med pass, right?

20 A Correct.

21 Q And there are nurses on the unit and they're passing out  
22 medication, correct?

23 A Yes.

24 Q And your testimony is that he was assessed at 6:00 in the  
25 morning, right?

1 A The note says the patient was --

2 Q The note says that, right?

3 A Yes.

4 Q And again at noon, right?

5 A Yes.

6 Q The note also indicates that he was feeling weak, had no  
7 appetite, but reported no more vomiting, right?

8 A Correct.

9 Q And it says that he's afebrile.

10 A Yes.

11 Q And that he had a small amount for lunch, correct?

12 A Yes.

13 Q Now did you put in a call to inquire specifically as to  
14 what exactly a small amount for lunch meant? You didn't, did  
15 you?

16 A I was not even aware of that note.

17 Q Oh, you had no idea about it.

18 A No.

19 Q No idea. Okay. So let's move on. Now you are home at  
20 7:00 at night, right, and you get another phone call about  
21 Rafael Rodriguez, correct?

22 A Yes.

23 Q This was after the pretzels, right?

24 A Yes.

25 Q Just so we're clear. And it's after the water too, right?

1 A And after lunch.

2 Q And after the small lunch that you can't really  
3 characterize because you don't really know what that means and  
4 you didn't know anything about it, correct?

5 MR. NINOSKY: Objection. Argumentative.

6 THE COURT: I'll sustain that argumentative objection.

7 BY MS. RAMEAU:

8 Q Well, you just testified that you had no idea about that  
9 particular note pertaining to the lunch, correct?

10 A I just saw the note right now.

11 Q Okay. Now let's move on. So this note here indicates that  
12 at 7:00 p.m. he's still having abdominal pain, correct?

13 A Yes.

14 Q And that he's fussy and agitated, correct?

15 A Correct.

16 Q Now this is after the pretzels and after the water, right?

17 A And after lunch.

18 Q And after the small lunch that you can't really  
19 characterize for the jury, correct?

20 A And dinner that's not documented.

21 Q And didn't know about, is that right?

22 A Correct.

23 MR. NINOSKY: Your Honor, can we approach?

24 THE COURT: Sure.

25 (Sidebar)



1 MR. NINOSKY: I --

2 MS. RAMEAU: I just wanted to clarify, Your Honor.

3 MR. NINOSKY: I certainly understand being able to  
4 redirect. It sounds to me like we're doing everything again.  
5 We have a busy schedule to try to keep on and we're just  
6 rehashing the same stuff over and over.

7 THE COURT: (Inaudible). How much more do you have,  
8 Counsel?

9 MS. RAMEAU: I'm sorry, Your Honor.

10 THE COURT: How much more do you have?

11 MS. RAMEAU: Not much at all. Not much at all. I'm  
12 almost done.

13 THE COURT: (Inaudible).

14 MR. NINOSKY: Right now there might not be any, but  
15 we'll have to see.

16 MS. RAMEAU: Okay. Thank you.

17 (End of Sidebar)

18 BY MS. RAMEAU:

19 Q You had a discussion with Mr. Ninosky about, you know, how  
20 to determine whether you send a patient to the hospital. Do you  
21 remember that?

22 A Yes.

23 Q And you testified that in order to decide whether to send  
24 someone to a hospital you base your decision on a multitude of  
25 things, right?

1 A Yes.

2 Q You don't just send a patient to a hospital because the  
3 patient says, "I want to go to the hospital," correct?

4 A Correct.

5 Q That's reasonable, right?

6 A Right.

7 Q But you will agree that if a patient is begging to go to a  
8 hospital that that might be an indication that the patient is  
9 not doing well, correct?

10 A Correct.

11 Q It might be an indication that whatever the RNs and the  
12 LPNs had been doing is not working for the patient, right?

13 A Correct.

14 Q You wouldn't assume that a patient is lying, right? You  
15 wouldn't assume that a patient is malingering, right?

16 A No.

17 MR. NINOSKY: Objection, Your Honor.

18 THE COURT: I'll overrule the objection. Let's finish  
19 up and we'll get to lunch.

20 BY MS. RAMEAU:

21 Q Yes, Your Honor. Now you had a discussion with Mr. Ninosky  
22 about testicular pain. Do you remember that?

23 A Yes.

24 Q That Mr. Rodriguez had a testicular exam, right?

25 A It was documented, yes.

1 Q That was documented, an examination of his testicles,  
2 right?

3 A Yes.

4 Q Conducted by a male nurse by the name of Chad Walters, is  
5 that right?

6 A Yes.

7 Q Now you were here yesterday when your Codefendant Susan  
8 Roberts testified that she doesn't know whether she discussed  
9 with Chad Walters the fact that in addition to experiencing  
10 testicular pain that Rafael Rodriguez was also having abdominal  
11 pain, correct?

12 A Yes.

13 Q She testified that she has no idea whether she put it in  
14 the proper context, right, for Nurse Chad Walters, correct?

15 MR. NINOSKY: Objection, outside the scope.

16 THE COURT: Counsel, this is outside the scope of the  
17 cross-examination.

18 MS. RAMEAU: He asked her about testicular pain, Your  
19 Honor. It's within the scope.

20 THE COURT: Well, that's true. He didn't talk to her  
21 about the actual -- he didn't talk to her --

22 MR. NINOSKY: But it's also mischaracterization as  
23 well.

24 MS. RAMEAU: Can we approach?

25 THE COURT: No, let's not approach. I'll overrule the

1 objection. You may continue with your examination.

2 BY MS. RAMEAU:

3 Q Thank you. So you really -- you have no idea if and to  
4 what extent your Codefendant, Susan Roberts, put Plaintiff's  
5 complaint of testicular pain within the proper context with the  
6 abdominal pain, correct?

7 A Correct.

8 Q And I'm not so much concerned about Chad Walters. I'm  
9 concerned about you. Did you put Plaintiff's complaint --

10 MR. NINOSKY: Objection, Your Honor.

11 THE COURT: I think the start of that was  
12 objectionable, but I'll overrule the objection for now and allow  
13 you to finish your question.

14 BY MS. RAMEAU:

15 Q Thank you, Your Honor. Did you put Plaintiff's complaint  
16 of testicular pain within the proper context with the abdominal  
17 pain within your own mind?

18 A Yes.

19 Q And in spite of that, you weren't even thinking about an  
20 appendicitis, right?

21 A It was --

22 Q It's withdrawn. I'll withdraw it. Now I want to talk to  
23 you about this discussion you had with Mr. Ninosky about  
24 patients on the medical unit being seen four times a day. Do  
25 you remember that?

1 A Yes.

2 Q So four times a day an inmate on the medical unit is seen  
3 by either an RN, correct?

4 A They have a nursing encounter four times a day.

5 Q An LPN, correct?

6 A He had a nursing encounter four times a day.

7 Q I'm asking you generally, okay.

8 A Yes.

9 Q So four times a day an inmate on the medical unit --

10 A Well, generally patients don't have encounters on the  
11 medical unit four times a day with nurses.

12 Q Okay. So this is a special case, right?

13 A This was increased monitoring.

14 Q Increased monitoring, right? So he was having increased  
15 monitoring with RNs and LPNs, right?

16 A Yes.

17 Q Because you thought there was a concern, right?

18 A I thought there was -- the patient had continued  
19 complaints.

20 Q Yet you didn't make yourself available to conduct your own  
21 provider's assessment, right?

22 A Correct.

23 Q I mean, you testified that he got to see all these people,  
24 but he didn't see you, right?

25 A Correct.

1 Q You're the provider, correct? You're the one with the  
2 knowledge and experience.

3 A It was not necessary for Mr. Rodriguez to see me.

4 Q Withdrawn. I'll withdraw the question. I'll move on.

5 MR. NINOSKY: Your Honor, you can't withdraw a  
6 question in the middle of an answer. I object to the withdrawal  
7 of a question.

8 THE COURT: Ms. Rameau, that is the --

9 MS. RAMEAU: I can withdraw that question. It's  
10 withdrawn.

11 THE COURT: That form of questioning would be  
12 improper, but I'll allow you to continue.

13 BY MS. RAMEAU:

14 Q You had a discussion with Dr. Ninosky about the average  
15 person calling a doctor and, you know, getting an appointment  
16 within two days. Do you remember that? Do you remember that?

17 A Yes.

18 Q Now, the average person is not incarcerated and locked up  
19 in a cell, right?

20 A Correct.

21 Q So the average person can go to the emergency room,  
22 correct?

23 A Or they can stay at home on their couch and drink Gatorade.

24 Q The average person can go to the emergency room, correct?

25 A Yes.

1 Q And be subjected to a CT scan, correct?

2 A Yes.

3 Q Revealing the proper diagnosis, correct?

4 A Yes.

5 Q Nothing further.

6 THE COURT: Thank you very much, Counselor.

7 Mr. Ninosky, do you have any further questions of this  
8 witness?

9 RECROSS-EXAMINATION

10 BY MR. NINOSKY:

11 Q Was the CT scan the first thing ordered at the hospital  
12 from what you heard yesterday?

13 A No.

14 MS. RAMEAU: Objection.

15 THE COURT: Basis?

16 MS. RAMEAU: It's withdrawn, Your Honor.

17 THE COURT: Very well. Counsel, you may proceed.

18 BY MR. NINOSKY:

19 Q You heard that it wasn't a CT scan, was it?

20 A No.

21 Q It was an x-ray.

22 A Correct.

23 Q And it was to rule out a small bowel obstruction, correct?

24 A Correct.

25 Q And you heard that a small bowel obstruction was a

1 reasonable thing to consider, huh?

2 A Yes.

3 Q Those are all I have. Thank you.

4 THE COURT: Thank you, Counselor.

5 Anything further of this witness?

6 FURTHER REDIRECT EXAMINATION

7 BY MS. RAMEAU:

8 Q Now, Mr. Ninosky asked you about a CT scan or an x-ray  
9 being ordered first at the hospital. Do you remember that?

10 A Yes.

11 Q And you have x-ray machines, portable x-ray machines  
12 available to you at the facility, right?

13 A Correct.

14 Q And you never ordered that he be x-rayed, correct?

15 A The patient had bowel sounds.

16 Q You never ordered that he be -- the question was --

17 A His vital signs were stable. There was no report to me  
18 through the weekend of nausea or vomiting.

19 Q Your Honor. Ms. McGowan, my question was you didn't order  
20 an x-ray for Mr. Rodriguez, did you?

21 A No.

22 Q Nothing further.

23 THE COURT: Thank you, Counselor.

24 Mr. Ninosky.

25 MR. NINOSKY: Nothing further, Your Honor. Thank you.



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(Witness excused.)

(End of witness testimony 12:24 p.m.)

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C E R T I F I C A T I O N

I, Crystal Thomas, court approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in  
the above-entitled matter, and to the best of our ability.

*Crystal Thomas*

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Crystal Thomas, CET-654

Date: June 9, 2017